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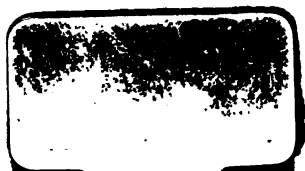
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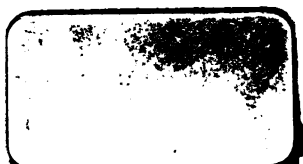
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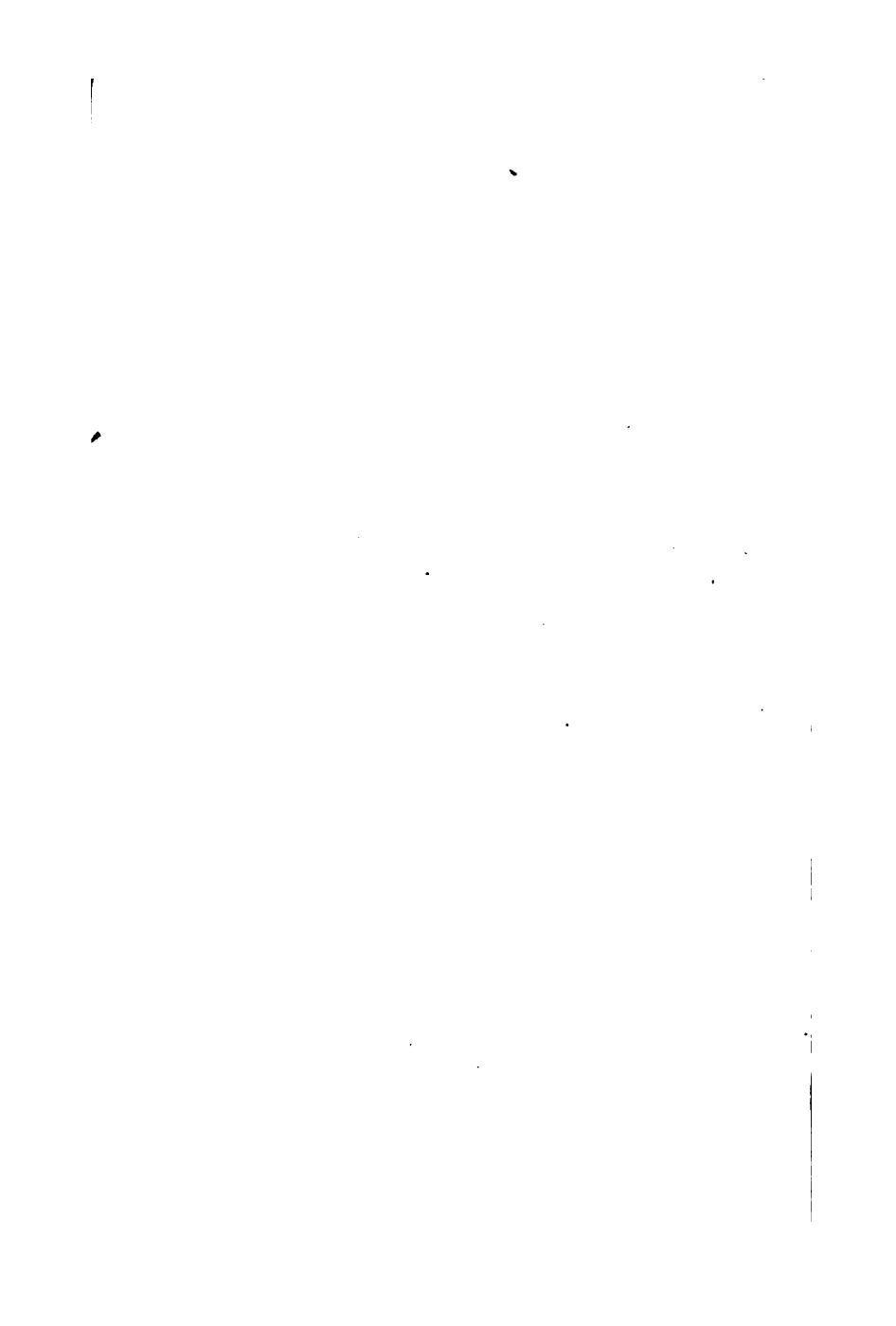


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# THE LAW

RELATING TO

## MERCHANT SEAMEN,

ARRANGED CHIEFLY FOR THE USE OF

*Masters and Officers in the Merchant Service.*

WITH A COPIOUS INDEX.

BY

EDWARD WILLIAM SYMONS,

CHIEF CLERK OF THE THAMES POLICE.

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## INTRODUCTION.

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It is a remarkable circumstance, that in this great maritime country no attempt was made, previous to the year 1835, to consolidate the laws relating to Merchant Seamen, and to include in one Act of Parliament some of the general principles which had been applied to their regulation by the Court of Admiralty, but which were not to be traced beyond the precincts of that Court except by laborious research. In that year, the Act commonly called Sir James Graham's Act,\* laid the foundation of a more simple and intelligible system, and whatever may be its defects, it deserves at least a fair trial, which cannot be given to it so long as those whose especial duty it is to obey the law and act upon it, remain imperfectly acquainted with its provisions, or continue inattentive to some of its plain and positive rules.

\* 5 & 6 W. IV. c. 19.

Daily experience of the defective manner in which the Act of Parliament has been complied with, has led to a belief that much of the difficulty which has been ascribed to it, may be more properly attributed to an insufficient acquaintance with its enactments. Want of information and error on the part of the master of a ship necessarily produce dissatisfaction in the minds of the seamen, and it behoves masters to make themselves well acquainted with the law, both as regards their own duties, and also the rights of and treatment to be observed towards their crews.

The Act does not take away or diminish the authority of the master "over all the mariners on board," nor does it restrain him, in case of disobedience or disorderly conduct, from "correcting them in a reasonable manner." "Such an authority," said Lord Tenterden, "is absolutely necessary to the safety of the ship and of the lives of the persons on board," and the common law of this country says so still. The Act, so far from impairing the authority of the master, has given him an additional power of great value if constantly enforced and judiciously exercised,—namely, the power of subjecting seamen to forfeitures for absence, or neglect of duty, provided the required entries in

the Log-book be duly made as directed by the Act. Such entries should never be omitted, whether the absence or neglect of duty be continued for a long time, or confined even to an hour's duration, or a single act. The master does not deprive himself or his owners of a discretion to waive the forfeitures upon subsequent good conduct of the seamen, by making the required entries; but if he neglect to do so, he abandons his power to enforce the forfeitures. If a judicious use of this additional power should not induce seamen to return to their duty, they are to be reminded that repeated or continued acts of disobedience will, by the maritime law, cause the forfeiture of their whole wages, as before the passing of the Act; and in cases of peril, or pressing necessity, the master may exercise his authority to compel them to perform the duty of the ship, subject to the advice which he will find in the course of the second chapter of the following treatise, as to the discreet and temperate manner in which such authority is to be exercised.

It is of importance, therefore, to consider the Act in connexion with the general principles of maritime law, some of which it embraces, and by reference to the whole of which it is to be con-

strued where its interpretation is not obvious and explicit. Such a general view of the entire law relating to Merchant Seamen, applied in regular order to the various incidents between the act of signing the agreement to perform a voyage and its termination, is now submitted to the public, but it is intended chiefly for the use and information of Masters and Officers in the Merchant Service.

In two or three instances perhaps the extracts from the Admiralty Reports may be considered tedious; but intelligent men will find in them instruction of great practical value: if curtailed, they might be liable to be misunderstood. And it will be found that upon points of importance which occur at different periods of the same voyage, and require continued attention, observations are sometimes repeated, for the purpose of inducing masters to be accurate;—for instance, with respect to entries in the Log-book of the seamen's misconduct.

This leads to a remark that owners and masters of *coasting vessels* who have not hitherto caused Log-books to be kept on board their vessels, would consult their own interests and improve the management and discipline to be observed on board

of such vessels by causing Log-books to be forthwith kept; for the law does not allow any forfeiture of wages to be imposed on seamen for absence without leave, neglect of duty, or desertion, unless the same shall have been truly entered in the Log-book according to the directions of the Act.

With the information which it has been attempted to simplify and conveniently arrange in the following pages, the law, as it stands at present, will have the chance of a fairer trial, and greater facilities will be afforded to discover and remove its defects than have hitherto been given to those whose interests are deeply involved in the preservation of good order in merchant ships, or to the general body of Merchant Seamen, whose prosperity and comfort are essentially promoted by a wholesome system of discipline.

E. W. S.

*Thames Police Office,*  
1st June, 1839.



## **CHAPTER I.**

**Treats of the Matters which require to be considered and observed before the commencement of a Voyage.**

## **CHAPTER II.**

**Embraces those Matters which require to be attended to at Sea, or in parts beyond the Seas.**

## **CHAPTER III.**

**Includes those Matters which remain to be considered at the Termination of a Voyage.**

## **CHAPTER IV.**

**Contains all the Clauses in the Act of Parliament which relate to Apprentices.**





## CHAPTER I.

OF THE MATTERS WHICH REQUIRE TO BE CONSIDERED  
AND OBSERVED BEFORE THE COMMENCEMENT OF A  
VOYAGE.

THE hiring of seamen is the first object to which the Act of Parliament relating to Merchant Seamen is directed, the second section whereof enacts, that “ it shall not be lawful for any master of any ship or vessel belonging to any subject of His Majesty of this United Kingdom trading to any parts beyond the seas, or of any British registered ship of the burthen of eighty tons or upwards, employed in any of the fisheries of the United Kingdom, or in trading coastwise or otherwise, to carry to sea on any voyage, either from this Kingdom or from any other place, any seaman or other person as one of his crew or complement (apprentices excepted), without first entering into an agreement in writing with every such seaman, specifying what monthly or other wages each such seaman is to be paid, the capacity in which he is to act, and the nature of the voyage in which the ship is intended to be em-

ployed, so that the seaman may have some means of judging of the probable period for which he is likely to be engaged; and the said agreement shall contain the day of the month and year in which the same shall be made, and shall be signed by the master in the first instance, and by the seamen respectively at the port or place where such seamen shall be respectively shipped; and the master shall cause the same to be, by or in the presence of the party who is to attest their respective signatures thereto, truly and distinctly read over to every such seaman before he shall be required to sign the same, in order that he may be enabled to understand the purport and meaning of the engagement he enters into, and the terms to which he is bound.”\*

By the third section it is enacted, that in the cases of ships as aforesaid bound to parts beyond the seas, except ships regularly trading or making regular voyages to any of the Islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any port on the Continent of Europe between the river Elbe inclusive and Brest, every such agreement shall be in the form in the schedule to the Act annexed, marked A.,† which will be found in the Appendix (No 1).

\* 5 & 6 W. IV. c. 19, s. 2.      † s. 3.

And by the same section it is also enacted "that in the cases of ships employed in fishing on the coasts of the United Kingdom, and of ships regularly trading from one part of the United Kingdom to another, and of ships regularly trading or making regular voyages to any of the islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any port on the Continent of Europe between the river Elbe inclusive and Brest," the agreement to be entered into as aforesaid shall be in the form in the schedule to the Act annexed, marked B (Appendix, No. 2).

And it is enacted that such agreements shall contain true entries under their respective heads of the particulars set forth in the said schedules, A. and B., so far as the same can be ascertained.

The difference between the two forms of agreement requires attention. The former is for a definite voyage, determinable and to end on the arrival of the ship at the destined port named in the agreement, and the termination of it is required to be stated in the description of the voyage. The words to be used are these :—"On a Voyage from the Port of \_\_\_\_\_ to \_\_\_\_\_ touching at [*here state "the places at which it is intended the ship shall touch,"*] and back to the Port of \_\_\_\_\_"

But in the cases of ships employed in fishing, and in the coasting trade, and of ships making regular voyages to Jersey, Guernsey, Alderney, Sark, and Man, or to any port on the Continent of Europe between the river Elbe inclusive and Brest, the form prescribed by the Act is adapted to a hiring for an indefinite time or number of voyages without any expressed termination. The words to be used in such cases are these only,—“ Which ship is to be employed in fishing on the coasts of the United Kingdom ” [*if a fishing vessel*], “ in trading from one part of the United Kingdom to another ” [*if a coasting vessel*], “ in trading to the Island of Jersey (or Islands of Jersey, Guernsey, &c.) ” [*if such be the case*], or “ in trading to a Port (or Ports) on the Continent of Europe between the river Elbe inclusive and Brest ” [*if such be the case*]. The Legislature clearly did not contemplate the insertion of any period of time or destination in this part of the agreement, because a proviso is afterwards introduced, which leaves the parties at liberty to put an end to it at the termination of any voyage in a Port of the United Kingdom.

This form is adapted to the convenience of all parties engaged in the regular coasting trade, and in steam and other vessels making constant voyages to Ports on the Continent of Europe between the

river Elbe inclusive and Brest, and it ought to be adopted instead of the old mode of engagement by the voyage or run, which is still used in the coal-trade, to the prejudice of the seamen engaged therein, and which it is submitted is now an illegal form of agreement, as not being conformable to the provisions of the existing Act of Parliament. If colliers were permitted on their arrival in the Port of London to discharge their cargoes forthwith, as is the case with other vessels, the seamen could not perhaps complain of being paid by the voyage or run, although not strictly according to law; but when they are frequently detained two or three weeks after their arrival in the Port of London and before delivery, it is but fair and just that they should have the compensation which the form of agreement prescribed by the Act would give them, and that their wages should be fixed at a monthly rate.

It may be objected that agreements to pay monthly wages have a tendency to render the seamen inactive, but this is contrary to the natural effect of an equitable compensation for labour; and where vessels are detained for a length of time after their arrival in a port of delivery (as in the Port of London) without being permitted to discharge their cargo, it seems only fair to the seamen that their contract should be so drawn up

as to entitle them to compensation for their loss of time, which is caused without any default on their part. Where there is no cause for dissatisfaction men generally work willingly, and it would be very desirable to extinguish the disputes which frequently arise between masters and seamen, in consequence of the uncertain periods of detention to which coasting vessels are subject in ports of delivery.

The improper practice of hiring by the voyage prevails in the North of England, even in cases where a ship is to proceed to a port on the continent of Europe, and where the voyage must be subject to contingencies which render its duration uncertain. In such cases it is sometimes agreed, that under certain circumstances the seamen shall be entitled to claim for two voyages, whilst under other circumstances, seldom clearly defined, they shall be entitled to more or less. This uncertainty is contrary to the Act of Parliament, which requires the wages to be distinctly stated, and it frequently leads to misunderstandings, which induce the seamen to quit their ships at periods when masters or owners cannot easily supply their places; and thus the course of the voyage may be seriously interrupted.\* The interests of masters and owners will

\* The custom in the North of England to pay by the voyage is so fondly preserved, that an artificial mode of calculation has been established, whereby a single voyage is called a

be promoted by adopting, in all cases where ships are liable to detention, or to uncertainty in regard to the period of the voyage, a monthly rate of wages, and thereby conforming to the Act of Parliament.

Some misapprehension seems to be entertained as to the compulsory nature of the Act with respect to the *forms* of agreement to be used, and certain forms have been printed and circulated for general use, and are frequently substituted in lieu of the forms given in the Schedules of the Act, which are clearly "contrary to and inconsistent with the provisions and spirit" thereof. The attention of masters is particularly directed to this

voyage and a fraction, or a double or treble voyage, according to the distance of the Port of destination from the clearing Port;—thus, a voyage from Sunderland or Newcastle to London or Margate, or any port to the eastward of Beachy Head, is reckoned as one voyage; to Newhaven, a voyage and a third; to Portsmouth, a voyage and a half; to Exmouth, a voyage and two-thirds; to Plymouth and Falmouth, two voyages; and to any port in the Bristol Channel, three voyages. Sometimes the remuneration to the seamen is regulated by the successful progress of the voyage; as when ships proceed from Sunderland or Newcastle to Hamburgh or elsewhere abroad, and obtain cargoes for the homeward voyage, it is agreed to pay for a voyage and a half, or to give some extra remuneration for loading the homeward cargo. To put such special and conditional engagements in the form prescribed by the Act of Parliament requires some ingenuity, of which no successful specimen has hitherto been exhibited at the Thames Police Office.



point for their own security, as the fourth section imposes a penalty of ten pounds upon any master who shall carry out to sea any seaman (apprentices excepted) without having first entered into such agreement "*as is thereby required,*" for each seaman whom he shall carry out contrary to the Act, and the third section enacts that every such agreement in the cases of ships as aforesaid bound to parts beyond the seas *shall be in the form marked A.*; and that in the cases of ships employed in fishing on the coasts of the United Kingdom, and trading from one part of the United Kingdom to another, and to the islands before named, or to any port on the continent of Europe between the river Elbe inclusive and Brest, the agreement *shall be in the form marked B.* The master who uses any agreement which does not include the whole matter contained in the form prescribed by the Act to be used in the particular case, or which contains stipulations framed in other and different terms, so as to render it inconsistent with the Act, will commit a breach thereof, and render himself liable to the penalty of ten pounds. The erroneous printed forms now in circulation, instead of containing the clause relative to embezzlement and wilful or negligent loss or destruction of cargo or stores in the plain and brief language prescribed by the Act, contain one of a longer but not more comprehensive description, and therefore can effect no good which

may not be equally accomplished under the legal form; but they are still more objectionable on account of the clause which has been introduced into them to subject all the ship's company to a proportionate abatement of wages, in case of any embezzlement, damage, or loss, which cannot be traced to the person or persons by whose means the same may have happened. This is a stipulation which, besides being contrary to the common law of this country, as rendering an innocent person responsible for the crimes and misconduct of a guilty person, is manifestly inconsistent with the spirit of the Act, and with the form directed to be used, which expressly confines the liability to abatement on account of embezzlement, or wilful or negligent loss or destruction of cargo or stores, to "*the seaman guilty of the same.*" Such stipulation renders the agreement void and of no effect, for the fifth section declares, that "no agreement made contrary to or inconsistent with the provisions of the Act, shall be valid or binding on any seaman signing the same;"\* and therefore, any master who makes such a stipulation fails to enter into such agreement as *is required by the Act*, and renders himself liable to the penalty of ten pounds.†

This penalty attaches to the master's neglect of

\* 5 & 6 W. IV. c. 19, s. 5. † S. 4.

any one of the several particulars required to be observed in making the agreement, which are therefore here separately set out.

Every one on board the ship forming part of the crew or complement (apprentices excepted), must be required to sign the agreement. Engineers and firemen employed on board steam vessels are within the meaning of the Act, for the 52d section enacts, that "every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board, shall be deemed and taken to be a seaman within the meaning and for the purposes of the Act." Young persons going out upon trial voyages are within it, and if not apprentices, should also sign the agreement, whether they are to receive wages or not; and if they are not to receive wages, it should be so stated. It not unfrequently happens, that persons in foreign parts contract with the master to "work their passage" home to this country; in other words, to do such work on board as they may be set to and may be capable of performing, in consideration of which services the master engages to give them a free passage. Even in such case the master should cause the agreement to be signed by the party, and it should be stated in the column under the head "Quality," that he *is to render such services as he may be capable of performing for his passage*: in the column for

wages the word "*none*" should be plainly written. If the master neglect to have the agreement signed by such persons, he may be liable to a proceeding for the penalty of ten pounds for taking the party to sea as one of his crew or complement without signing the agreement.

The agreement is to specify in the proper column what monthly or other wages each person is to be paid. If the wages are to be monthly, the words "share or voyage," at the head of the column, should be struck out. If the wages are to be so much for the voyage, the words "calendar month, share, or," should be struck out. If the seamen are to be paid by share, then all the other words should be struck out, and the proportionate share to be assigned to each should be clearly stated in the column; so as to adapt the agreement to the particular voyage in each case.

In the column headed with the word "Quality," the capacity in which each person is to act must be stated.

The day of the month and the year in which the agreement is made with every man, must be entered in the proper columns.

The agreement *must "be signed by the master*

*in the first instance.*"\* This particular has been frequently neglected. The master should sign at the foot of the agreement, and above the columns. It will not be sufficient for him merely to write his name in the heading, as some masters have supposed.

It must be signed by every person forming part of the crew in the column headed "Men's names," in the presence of a party who is to attest their respective signatures, by signing his own name in the column headed "Witness to signature;" and the party acting as witness must be a third person, and not one of the parties to the agreement. This matter may seem of trifling importance to dwell upon, but when agreements are found in which the master himself has acted as witness, it is necessary

\* It is recommended that a duplicate of the agreement should be invariably signed, so that one part may be kept on board the ship, and the other deposited with the owner. This is not a new practice; there are cases stated in the Admiralty Reports which show that it has been sometimes resorted to, and it is very desirable that it should generally prevail. In case of the loss of a ship it may be very material for the owner to be able to produce a duplicate agreement signed and completed as an original document; and in case of a seaman absenting himself from his ship just before the sailing thereof, or refusing to proceed to sea in her, the production of a duplicate agreement signed by him, will enable the owner to complain to a magistrate, and pursue the ordinary course to punish the seaman after the departure of the ship.

to point out the irregularity. There may be no objection to a mate or any other officer being called on to witness the signature of any seaman; but the master is a party to the contract with every individual forming a part of the crew, and whenever the law requires a witness to a contract between two parties, a third person, and not one of the contracting parties, must be called to act and sign his name as such witness.

Also, before the seamen shall be required to sign the agreement, the master is to "cause the same to be truly and distinctly read over to every such seaman by or in the presence of the party who is to attest their respective signatures thereto." And if any master shall neglect to cause the agreement to be distinctly read over to each such seaman, "as by the act he is enjoined, he shall for every such neglect forfeit and pay the sum of five pounds."\*

The agreement must be signed "at the port or place where such seamen shall be respectively shipped:" signing it at sea after the commencement of a voyage will not protect a master from the penalty.

If the places at which it is intended the ship

\* 5 & 6 W. IV. c. 19, s. 4.

shall touch cannot be stated, the agreement must specify *the nature of the voyage in which she is to be employed*, "so that the seaman may have some means of judging of the probable period for which he is likely to be engaged." This requires especial attention, and will be elucidated by the general principles of law which are explained in the following cases.

In the case of a ship bound to New South Wales, where the voyage was expressed to be to New South Wales and India, *or elsewhere*, and to return to a port in Europe, the Court of Admiralty gave to the words, *or elsewhere*, a reasonable construction, conformable to a certain extent to the necessities of commerce, but held that they were not to be taken in the indefinite latitude in which they were expressed, and would not authorise the master to proceed from Port Jackson to New Zealand, from thence to Valparaiso, and Lima, and Otaheite, and back to Sydney Cove, and from thence to Calcutta. And in another case, where the voyage was expressed to be "from London to Batavia, to any ports and places, the East India Seas, or elsewhere, and until her final arrival at any port or ports in Europe," it appearing to have been the intention of the owners at the commencement of the voyage, that the ship should return from India to Cowes, and there receive orders as to

the port of discharge; the description of the voyage was considered much too general, and it was held that the intention to come to Cowes for orders, as to the port of delivery, ought to have been mentioned.\* In another case the voyage was thus described:—"From London to Van Diemen's Land, *viâ* Cork and elsewhere, and back to London." The ship sailed with convicts to Sydney, and from thence to Batavia, and in the course of her return voyage, arrived in the Downs, when the Captain proceeded to London, where he received directions to go with the ship to Rotterdam. Five sailors objected to accompany the ship upon her new destination, three of whom were dismissed with their wages. The complainant in the case and another mariner continued in the vessel during this further voyage, but they declined the performance of any duty until the arrival of the ship in the Port of London. It was contended that this ulterior voyage was within the contract, and that the refusal of the mariner to work amounted to an entire forfeiture of his wages; but Lord Stowell said,—“In my opinion, what the seamen were not bound to accede to, cannot be considered as such a desertion of their duty as to amount to any forfeiture whatever. The owners, it would seem, had reserved in their own minds, the final termination of the voy-

\* Abbott, 435.



age; but *both parties* have a right to know what is the precise voyage for which they undertake to contract. It may be said that the alteration is slight—that it is a very little prolongation of the voyage; but it is perfectly clear, that the seamen are not the less entitled to know *that*. The voyage had lasted a year; it was to be prolonged by an order for the ship to go to Rotterdam; and it was admitted in the argument, that by the same rule of construction the owners might have sent her on to Russia. The Court would be doing a great injustice to the mariner, if it put such a construction upon this contract, as to say, that he had been guilty of such a disobedience as to effect a total forfeiture of his wages. Let the power of change, reserved in this case by the owners to themselves, be announced to the other contracting parties, that each may act for his own interest. The seaman is entitled to know the covenants which are to bind him. Here an alteration of the voyage takes place, perfectly unforeseen and un contemplated by the sailors, and it detains the ship out for a month. I cannot, under the terms of this contract, consider that they are bound to accede to it; their conduct, in my opinion, amounts to nothing like a desertion.”\*

In a subsequent case the voyage was described

\* 1 Hag. Admiralty Reports, 248.

in the ship's articles—"From London to Madras and Calcutta, and back to London." The vessel arrived in Madras roads, where she landed troops which she had carried out, and there a new charter-party was entered into for successive voyages, and she took on board other troops with which she sailed to Prince of Wales's Island, and from thence to Calcutta. It was admitted that the seamen were, on account of the deviation, "entitled to their discharge at Madras, if it had been demanded, and at Calcutta after the cargo *had been unloaded.*"

The delivery of stores put on board at London, was commenced immediately after the arrival at Calcutta; the crew demanded their discharge and refused to work, but the greater part of them returned to their work on a promise that they should have their discharge if they were entitled to it. The seaman (Smith) who instituted a suit for his wages, and eleven others, *persisted in refusing to work*, and they were put in irons. After the delivery of the cargo they were released and informed that the forfeiture of their wages, supposed to have been incurred, would not be insisted on, if they agreed to continue with the ship; but they quitted the ship. In this case the whole wages were decreed to be paid *up to the day when the cargo was all delivered.*

The judgment in the Court of Admiralty in this case contains matter of importance with respect to deviations, and is therefore stated in the words of the learned Judge.

“It is hardly necessary to discuss the general principles of law respecting deviations, because it is admitted that the deviation was such as might have entitled the men to their discharge at Madras or Calcutta, if it had been properly demanded. The reference, which has been made to the cases decided by my predecessor, fully sustains that admission; and it may not be improper to observe, that wherever a different principle has prevailed, it has always been required that any alteration of the original voyage that the owners or masters may make, shall be accompanied with notice and compensation to the mariner.

“By the Danish code, mariners are not allowed to leave their master on account of the enlargement of the voyage by a different destination, but an increase is made to their wages; and in Vanlinden’s ‘Institutes of the laws of Holland,’ I find this passage:—‘With respect to the hiring of sailors, there is this distinction between it and a hiring or engagement for any other service,—that the master, although he alter the voyage, may compel them to remain in the service, provided he makes

them a reasonable addition to their wages.' I cite these foreign ordinances to show, that on the harshest construction of the duties of sailors, something is required from the master in the way of compensation to reconcile them to their new engagement. The law of this country puts a freer construction on the service of mariners as well as of other persons. It requires them, indeed, in ordinary cases, to stay by the ship till the discharge of the cargo; but this is a duty which relates to a subsisting contract, where the other party has done nothing to supersede it. Where it has been interrupted, and this strict obligation between the parties has been loosened or relaxed by a clear breach of contract, or by ambiguous conduct on the part of the master, raising reasonable doubts as to its continuance, it can be explained only on the broad principles of equity and reciprocal justice.

“ In the present case no cause is assigned for the deviation, which connects it in any manner with the general object of the voyage, as growing out of accident, or over-ruling authority. It appears to have been perfectly spontaneous, and to have originated in a new charter-party entered into at Madras.

“ On the subject of deviation—in our own law, I

find cases in which the necessity of going to Petersburg for a cargo which the master had been disappointed of obtaining at Hamburgh, and alterations arising from stress of weather, or the order of the Government, have been held not to be deviations amounting to a breach of the mariners' contract, such as would entitle them to their discharge; and, in maritime engagements, allowances are often made in the interpretation of general terms, according to the accidents affecting the common object of the original voyage. But when no such ground of exception exists, justice and policy concur in requiring a strict observance of the specified conditions of the contract; and in the present times, especially, of increased enterprise in distant commerce, considerations of this kind gain additional force from the length of voyage and extent of time for which such engagements are formed.

“ On the question as to which party ought to have spoken first in making or demanding the explanation, I cannot but feel that it is a little hard on the Court to be required to put a severe and penal construction on such reserve as is imputed to the mariners, when a little more frankness of behaviour on the part of the master might have reduced every thing to an amicable understanding between them. Now that it is admitted that the deviation was such as to have entitled the mariners

to their discharge at Madras if it had been demanded, and at Calcutta after the cargo had been unloaded, I have a right to say, that the master would have done well, and I think no more than his duty, if he had treated the question openly on that principle, either at Madras, or before their arrival in the river Hoogley."

With reference to the refusal to work at Calcutta, the judgment proceeds,—“ Though I think the mariners acted hastily and imprudently, and perhaps illegally, in refusing to continue to work in the discharge of the remaining part of the cargo at Calcutta, I do not think that I can justly or equitably pronounce that they have thereby incurred a forfeiture of the wages earned in the former parts of the voyage. With respect to that small portion which may be connected with the delivery of the cargo, it is to be recollected that, by the deviation, they were thrown into doubt and uncertainty, which may justly operate in extenuation at least, if not in perfect justification, of their conduct. They are entitled also to some allowance for the imprisonment which they suffered. I think also that the use made of the supposed forfeiture to constrain them to sign new articles for indefinite voyages, under a representation that on those conditions only their wages would be paid to them, was an undue advantage taken of them, in the doubt and

uncertainty in which they were placed by the acts of the master. I pronounce, therefore, for the whole wages, and will only add the expression of a hope, that what has happened in this case, and in others that have been decided on the same principle, will be a caution to masters and owners, on these distant voyages, to act with frankness and liberality to the crew, in respect to any deviations that may affect their interest. It is by such treatment only that they can expect to retain good seamen in their employment; and it will be found ultimately to be the only beneficial principle on which such engagements can be regulated. If contingencies are incident to such voyages, and can be foreseen, they should be provided for in the ship's articles. If they arise unexpectedly, power should be given to the master to make compensation for any deviation that may be legally considered to affect the original contract."\*

Such contingencies may be generally provided for by one of the special clauses which may be inserted in the agreement of the master of the ship with the mariners, which special clauses form the next subject of consideration. A blank is left in the forms (A) and (B)† at the end of the engagements to be entered into by the seamen, and

\* 2 Hag. A. R. 243.

† Appendix, Nos. 1 and 2.

before the master's engagement to pay their wages, in which any other clauses may be inserted which the parties may think proper to introduce, but with this important limitation—"that the same be not contrary to or inconsistent with the provisions and spirit of the Act."

If the voyage cannot be stated with legal precision, or the master or owner entertain an intention to alter the course of it under particular circumstances, a special clause should be inserted, stating the peculiarity of the voyage to which the seamen will be liable, and engaging them not to quit the ship on account of any deviation arising under such circumstances.

It has been already stated\* that a clause to subject all the seamen to a proportionate abatement of wages, in case of any embezzlement, or wilful, or negligent loss or destruction of cargo or stores, which cannot be traced to the seaman guilty of the same, is inconsistent with the provisions and spirit of the Act, and contrary to the common law of this country, and to good and sound policy, and therefore ought not to be inserted in the agreement. Neither can it be legally stipulated, that in the event of "smuggling or illicit transactions on board," in



which *one or more* of the crew may be concerned, *the whole* shall be liable to forfeiture.\* But there is nothing in the Act to prevent the insertion of a clause, that in the event of any seaman being found guilty of smuggling, such seaman shall forfeit his wages; and it has been held that in point of law it is a good and proper regulation to insert that "every seaman committed to custody for the preservation of good order shall forfeit his wages, together with every thing belonging to him on board the ship."† There are instances of misconduct which occasion charges upon the ship not expressly thrown upon the guilty seaman by the Act of Parliament, but which he ought to bear, and it is suggested that a more comprehensive regulation to the following effect should be inserted in the agreement,—namely, that every seaman committed to custody for the preservation of good order, and every seaman who by his misconduct shall hinder the performance of the duty of the ship, and thereby occasion any expense to be incurred by the master, shall forfeit his wages together with every thing belonging to him on board the ship, or at the option of the master, the amount of charges attending the commitment of such seaman, and all expenses incurred by reason of his misconduct, in addition to the amount of such expenses as shall have been necessarily incurred in hiring a substitute to perform his work.

\* 2 Hag. A. R. 394.      † 3 C. and P. 534.

The form of agreement given by the Act provides for an abatement of wages in the event of a seaman entering himself as qualified for a duty to which he shall prove not competent, but it does not provide for the case of a seaman who deceives a master by engaging to serve while he knows himself to be incompetent from disease; and to meet such a case it may be stipulated, that if any seaman shall be in a diseased state and knowingly conceal the same at the time of signing the agreement, and shall after the sailing of the vessel become unable to perform his duty, he shall not be entitled to wages during such time as he shall be incapable of performing his duty.\*

The peculiarity of the Baltic trade renders a special clause necessary, if it be intended to put the seamen upon half wages in the event of the ship becoming ice-bound. And in cases where

\* If the seaman be labouring under the venereal disease at the time he signs the agreement, or if such disease afterwards incapacitates him from performing his duty, this will of itself work a forfeiture of his wages during such his incapacity, for it is the consequence of his own previous imprudence: and indeed the concealment of any disease, from the effects of which a sailor afterwards becomes unable to do his duty, would probably be held to be so material a concealment as to vitiate the agreement, and to deprive the sailor of all claim to wages.

the seamen are supplied with small stores at their own cost, it will be proper to guard against any dispute, by stipulating that the value of such stores supplied to them shall be deducted from their wages.

And in the coal or coasting trade, although the agreement may be for wages by the month, if circumstances render it expedient to secure the services of the seamen for a certain period beyond a run or voyage, a special clause to that effect would not be inconsistent with the Act. Or on the part of the seamen it may be stipulated that they shall not be discharged at a particular port, or if mutually convenient, that they shall not be discharged until the return of the ship to her clearing port.

By the 45th sec. of the Merchant Seamen's Act, "all masters and owners are strictly prohibited from introducing into any ship's articles or agreement with the crew, any clause or matter by which any penalty or forfeiture of any kind is agreed to be incurred by a seaman upon his entry into his Majesty's service." And the 5th sec. enacts, that no "clause whereby a seaman shall consent to forego the right which the maritime law gives him to wages in the case of freight earned by ships subsequently lost, or containing any words to that

effect, shall be valid or binding on any seaman signing the same." \*

The rate of wages to be paid should be distinctly understood by the seaman and plainly stated in the agreement; for "when a written agreement is made, it becomes the only evidence of the contract between the parties; and a mariner cannot recover any thing agreed to be given in reward for his service, which is not specified in the articles."† For parol evidence cannot by our law be received to explain or enlarge a written contract. Thus Lord Alvanley, on a trial in the Court of Common Pleas, refused to receive evidence of a promise to pay to a sailmaker, serving in a ship belonging to the East India Company, a monthly sum beyond the wages mentioned in the ship's articles, which had been signed by him as sailmaker.‡ But in a case where no rate of wages either by the month or for the voyage was affixed to the seaman's name in the ship's articles, Lord Stowell said, "Reference must be had to parol explanations of the original understanding of the agreement;"§ for it must be presumed that *some* wages was intended, and the seaman might recover a

\* These enactments are declaratory, as it should seem, of the common law, such engagements being contrary to public policy.

† Abbott, 440.

‡ Ib.

§ 2 Hag. 83.

*quantum meruit* for his services in the common law courts in such a case.

“ A seaman who has engaged to serve on board a ship is bound to exert himself to the utmost in the service of the ship ; and therefore a promise made by the master, *when a ship was in distress*, to pay an extra sum to a mariner as an inducement to extraordinary exertion on his part, was, at a trial before Lord Kenyon, esteemed to be wholly void. So where two of the crew deserted in the course of a voyage, and the master having in vain attempted to supply their places at Cronstadt, entered into an agreement with the rest of the crew at that place, to divide among them the wages of the deserters, if he should not be able to procure two other men at Gottenburgh, which in fact he could not do, Lord Ellenborough decided that the engagement was wholly void. It was attempted to distinguish this case from the foregoing by suggesting that the agreement was made on shore, when the master could not be supposed to be under any restraint or apprehension, and not at sea, in a moment of peril, like the former case : an obvious answer to this would be, that if the master had not been apprehensive of further desertion, he would not have made such a promise ; but the Chief Justice, in his own manly and dignified manner, decided the case upon the general

ground. 'There was,' said his lordship, 'no consideration for the ulterior pay promised to the mariners who remained with the ship: Before they sailed from London, they had undertaken to do all they could under the emergencies of the voyage; they had sold all their services till the voyage should be completed. The desertion of a part of the crew is to be considered an emergency of the voyage, as much as their death, and those who remain are bound by the terms of their original contract to exert themselves to the utmost to bring the ship in safety to her destined port.'

"In this, as in all other cases, an engagement for service, made in contravention of the rules of common or statute law, will be void."\*

It has, however, been decided that a second mate succeeding a chief mate, under any contingency which may happen in the course of the voyage, is entitled to a chief mate's pay, although no alteration be made in the contract with reference to this change of situation, and though he continue to serve with a second mate's pay affixed to his name in the agreement.†

"If after the hiring of seamen the owners of a

\* Abbott, 441.

† 1 Hag. 391.

ship do not think proper to send the vessel on the intended voyage, the seamen are to be paid for the time during which they may have been employed on board the ship. And if they sustain any special damage by breaking off the contract, it seems reasonable also that they should recover such damage by action upon the agreement.”\* If the master neglect to require the seamen to sign the agreement when they join the ship, he cannot compel them to remain. They are at liberty to leave at any time before signing it; and if they leave, the master will be liable to a claim for wages while they work on board, because, by his own neglect, they are treated as labourers rather than seamen, and he leaves them an option to quit.

The Log-book is the next point to which the master's attention is to be directed. That should be commenced with the hiring of the seamen, because the chief means of enforcing discipline provided by the Act are the forfeitures it imposes upon seamen for neglect of duty and absence without leave; for by sec. 7 it provides, “that no such forfeitures shall be incurred unless the fact of the seaman's temporary absence, neglect of duty, or quitting the ship, shall be duly entered or recorded in the ship's Log-book, which entry shall specify

\* Abbott, 450.

truly the hour of the day at which the same shall have occurred, and the period during which the seaman was absent or neglected his duty, the truth of which entry it shall be incumbent on the owner or master in all cases of dispute to substantiate by the evidence of the mate or some other credible witness."\* Unless, therefore, the Log-book be commenced forthwith, and any absence or neglect of duty on the part of the seamen be duly entered therein as the Act requires, no forfeiture for such absence or neglect of duty can be deducted from their wages.

It is recommended that the strictest attention be paid to the entries of such matters in the Log-book ; and as deductions from the seamen's wages are to be in exact proportion to the number of *days and hours* of their absence from the ship or from duty, and also of their neglect of duty, it is material to comply with the directions of the Act to enter in the Log-book the *hour of the day* at which the absence or neglect shall have occurred, and the period during which such absence or neglect shall have continued. A judicious use of such entries during the voyage will sometimes be found beneficial ; for if an obstinate or disorderly seaman, continuing to neglect his work, be called upon deck

\* 5 & 6 W. IV. s. 7.



to hear the entry of his neglect read from the Log-book, and if he be calmly told that for every day's continuance thereof such entry will surely work a forfeiture of two day's pay out of his wages, and for every hour's neglect a proportionate amount, it is not probable that he will obstinately continue to inflict such penalty upon himself. He may in this way be occasionally taught the wholesome lesson of obedience through motives of self-interest.

Before a ship proceeds on a foreign voyage the master is required to take care that a proper supply of medicines be put on board. The 18th sec. of the Act enacts that "every ship sailing from the United Kingdom to *any place out of the same*,"\* shall have and keep constantly on board the same a sufficient supply of medicines suitable to accidents and diseases arising on sea voyages, which shall be renewed from time to time as shall be found requisite; and in case any default shall be made in providing or keeping supplied such medicines as aforesaid, the expense of providing the necessary surgical and medical advice and attend-

\* This applies to ships sailing to the Islands of Jersey, Guernsey, Alderney, Sark, and Man, which are *out of* the United Kingdom, and also to steam and other vessels "making regular voyages to any Port on the continent of Europe, between the river Elbe inclusive and Brest."

ance and medicines which the seaman shall stand in need of until he shall have been cured, or shall have been brought back to some port of the United Kingdom, shall be borne and defrayed by the owner and master of the ship, or one of them, without any deduction whatever on that account from the seaman's wages."\* This section also throws upon the owner and master the expense of surgical and medical advice and medicines in every case of a seaman receiving "hurt or injury in the service of the ship:" in this case such expense is always to be paid by the owner and master, whether a sufficient supply of medicines be kept on board or not; but in other instances of sickness the section only enacts that such expense shall be defrayed by the master or owner *in case any default shall be made in providing or keeping supplied such medicines as aforesaid.*

The statute proceeds to enact, that "in case a seaman shall at any time, after having signed an agreement as hereinbefore mentioned, neglect or refuse to join the ship on board of which he shall have engaged to serve, or shall refuse to proceed to sea in her, or shall absent himself therefrom without leave, it shall be lawful for any Justice of the Peace in any of his Majesty's

\* 5 & 6 W. IV. c. 19, s. 18.

dominions at home or abroad near to the place where such ship shall happen to be, upon complaint of the fact made upon oath, by the master, mate, or owner thereof, and such Justice is hereby required, by his warrant to cause such seamen to be apprehended and brought before him; and in case such seaman shall not give a reason to the satisfaction of such Justice for his neglect, refusal, or absence, as the case may be, upon due proof of such neglect, refusal, or absence, it shall be lawful for any such Justice to commit such seaman to the House of Correction, there to be kept to hard labour for a period not exceeding thirty days: \* Provided always, that in case such seaman, on being brought before the said Justice, shall consent to join the ship and proceed on the voyage for which he shall have agreed, it shall be lawful for the said Justice, at the request of the master, instead of committing such seaman, to cause him to be conveyed on board the said ship or to be delivered to the master for the purpose of proceeding on the

\* It frequently happens that when application is made to a Justice under this section, the vessel having proceeded to sea, the party making the application is unable to produce the agreement or ship's articles, and thus he cannot prove the fact of the seaman having signed the agreement; whereas, if a duplicate original of the agreement had been made, upon production thereof and proof of the hand-writing of the witness to the signature, the party offending might be proceeded against even after the sailing of the ship.

voyage, and also to award to the master such costs incurred in the apprehension of the seaman as to such Justice shall seem reasonable, not exceeding in any case the sum of forty shillings, which shall be chargeable against and may be abated from the wages to grow due to such seaman."\* The Justice should be requested to give an award of such costs *in writing*, for as the amount "may be abated from the wages to grow due to such seaman," at the period when they become payable, if any dispute should then arise as to such costs, it probably would be necessary for the master to produce the Justice's award.

The only matters remaining to be noticed in this Chapter are the provisions of the Act to facilitate the shipment of seamen, and to protect them in some degree from fraud: the first of which provisions is, that "if any person shall, either on shipboard or on shore, harbour or secrete a seaman, who shall have signed an agreement to proceed on a voyage *to parts beyond the seas*, and shall have deserted or absented himself without leave from his ship, knowing or having reason to believe him to be a deserter or to be absent without leave, every person so offending shall forfeit ten pounds for every seaman so harboured."†

\* 5 & 6 W. IV. c. 19, s. 6.    † S. 10.

The second provision protects such a seaman from process to recover any debt exceeding five shillings incurred by him after he shall have signed any such agreement as aforesaid, until the voyage agreed for shall have been concluded ; and enables any Justice of the Peace upon complaint on oath to be made by any seaman, or on his behalf, to cause any chest, bedding, clothes, tools, or other effects of such seaman which may be withheld or detained by the keeper of a public-house or of a lodging-house for seamen, for any pretended debt alleged to have been contracted by such seaman, to be seized and delivered over to him.\*

\* 5 & 6 W. IV. c. 19, s. 10.

## CHAPTER II.

OF THE MATTERS WHICH REQUIRE TO BE ATTENDED  
TO AT SEA, OR IN PORTS OR PARTS BEYOND THE  
SEAS.

THE entries required to be made in the Log-book with respect to the seamen's conduct, are amongst the most important of the matters requiring the master's attention during the voyage. They are essential to the discipline and good order of the crew, and unless such entries be made of the actual periods when any of the seamen absent themselves, or neglect to perform their duty, or quit the ship, and of the actual periods during which they shall respectively continue to be absent, or neglect to perform their duty, the clauses imposing forfeitures upon them will be inoperative for want of evidence, as the entries in the Log-book must always be proved on any inquiry respecting the forfeiture of wages for absence, neglect of duty, or desertion, and the seamen will be entitled to their full wages notwithstanding such misconduct, if the entries thereof be not duly made. This has been already intimated, but it is

of such great importance as to require again to be noticed in the commencement of this chapter. And it is to be remarked that an especial form of entry is to be observed in all cases of *desertion*. "The circumstances attending such desertion" are not only to be "entered in" the Log-book at the time," but they are also to be "certified by the signature of the master and mate, or other credible witness." After the entry of the circumstances attending the desertion, the certificate may be entered in the following form:—

"We do hereby certify that the circumstances of the desertion of A. B., one of the seamen, as hereinbefore entered, are true.

"C. D., Master.

"E. F., Mate, or Passenger,"  
(*As the case may be*).

The Muster-roll should be commenced at the beginning of the voyage, and accurately kept throughout the course of it. By the Act which subjects masters and seamen to deductions "for the relief and support of sick, maimed, and disabled seamen, and of the widows and children of such as shall be killed, slain, or drowned, in the Merchant Service," it is enacted, that the master or owner, or such other person as shall have the care of any merchant or other private ship, shall keep

a book by way of Muster-roll, or account of the ship's company, signed by himself, in which shall be entered his own Christian and surname, and the Christian and surnames of all the officers, seamen, and other persons employed in such ship, and over against each name the age, place of birth, and quality of such seaman, or other person, and the time and place of his entering into the service of such ship; and such master or other person having the care of such ship, shall continue to keep such Muster-roll during the whole course of the voyage, and shall, from time to time, enter therein when and where any such master, officer, seaman, or other person shall be discharged from or shall leave or desert such ship, and when and where any other officers and men shall be shipped on board, describing them in like manner as the persons who first entered on board are directed to be described, and when and where any of them received any hurt or damage, or were killed, slain, or drowned, or otherwise happened to die, in case there should be any such, together with a statement of the amount of wages due to them at the time of death or desertion, and of what clothes or other effects such deceased man shall have left on board; which said account shall be in the form, and shall contain a true and correct return under their respective heads of the several particulars expressed in the schedule to the Act annexed (Appendix, No. 3).



And the Act imposes a penalty of five pounds upon every master or other person in care of a ship who shall neglect to keep such Muster-roll or account.\*

To convince every master how necessary it is for his own sake and protection to keep the agreement with his crew and the Muster-roll of the ship in the exact forms prescribed by the Acts of Parliament, his attention may properly here be drawn to the clause which compels him to produce and show them both "to the captain, commander, or other commissioned officer of any of His Majesty's Ships requiring a production and sight thereof," and empowers any such officer to muster the crew and passengers (if any) of any ship belonging to any subject [of the United Kingdom] in order to be satisfied that the provisions of the Act,† and of any other Act by which the crews of merchant ships are regulated, and the laws relating to navigation with respect to the crews of merchant ships, have been duly complied with. If it should be found that such provisions have not been complied with, it would be the duty of such officer to report any neglect or omissions to the Admiralty, and the master would probably not escape a prosecution for the penalties incurred. The

\* 4 & 5 W. IV. c. 52, s. 9.

† 5 & 6 W. IV. c. 19.

clause proceeds to enact, that "if any master shall, upon being required so to do by any such officer, neglect or refuse to produce such Muster-roll or such agreement, or shall obstruct any such officer in the execution of his duty in mustering the said crew or passengers, or shall produce any false Muster-roll, he shall for every such offence forfeit and pay the sum of twenty-five pounds."\*

To the same effect are the 48th and 51st sections, the former of which enacts, "that every master of a ship belonging to any subject of His Majesty, on his arrival at any foreign port where there shall be a British Consul or Vice-Consul, shall deliver to such Consul or Vice-Consul the agreement with his ship's crew, to be by such Consul or Vice-Consul preserved during the ship's stay there, and to be returned to the master before his leaving the port, without any fee or charge being made for the same; and if any such master shall refuse or neglect to deliver any such agreement to the Consul or Vice-Consul, he shall for every such offence forfeit and pay the sum of twenty-five pounds."†

The 51st section will be inserted hereafter, with other matters, to be considered at the termination of a voyage, in Chapter iii. of this work.

\* 5 & 6 W. IV. c. 19, s. 50.

† 5 & 6 W. IV. c. 19, s. 48.

If on account of the desertion or death of any seaman, or from any other cause, it should become necessary to hire another, either at any port in the United Kingdom or in parts beyond the seas, the same particulars with respect to such new seaman must be entered in the proper columns of the *agreement*, with the port or place of entry, and the date of it correctly stated before his signature; and the agreement must be truly and distinctly read over, in the presence of a witness, to the seaman, and the witness must, after he has heard it read, and seen the seaman sign the same, put his own name in the column reserved for it, and headed "Witness to signature." All this form must be strictly observed in every hiring of seamen, from the beginning and through the whole course of the voyage. If the hiring be at a *foreign port*, the privity of the Consul or Vice-Consul must be indorsed or certified on the agreement; and if the master neglect to obtain such indorsement or certificate he will be liable to a penalty of twenty-five pounds for every seaman so shipped at a foreign port without such indorsement or certificate.\*

It is now requisite to consider the clauses relative to the discharge of seamen, or leaving them behind at any place abroad. It is declared to be

\* 5 & 6 W. IV. c. 19, s. 49.

the intention of the Act, "that, except in the case of entering into His Majesty's naval service, no person of the crew [whether British subject or foreigner] shall be discharged either with or without his consent in any place abroad," unless with the sanction of a public functionary, where such functionary can be found.† If it be proposed to discharge any of the crew "at any of His Majesty's colonies or plantations," the master must obtain "the previous sanction in writing of the Governor, Lieutenant-Governor, Secretary, or other officer appointed in that behalf by the Government there; or in the absence of all such authorities at or near to the port or place at which the ship shall be then lying, then of the chief officer of customs of such colony or plantation resident at or near to such port or place." If it be proposed to discharge any of the crew "at *any other place abroad*," the master must obtain "the previous sanction in writing of His Majesty's Minister, Consul, or Vice-Consul there, or in the absence of any such functionary, then of two respectable merchants resident there; all which said functionaries respectively are authorised and required, and all which said merchants are authorised in a summary way, to inquire into the grounds of any such proposed discharge by examination on oath; and thereupon to grant or refuse

† 5 & 6 W. IV. c. 19, s. 43.

such sanction according to their discretion, having regard to the objects of the Act.”\*

Although the authority of the master, under special circumstances, to discharge a seaman in a foreign country is now so far controlled by the provisions of the Act as to prohibit him from acting on his own mere will in a matter in which he is so much interested, and wherein he may possibly be wrong, and so deeply affecting the seaman proposed to be discharged; yet, as such discharge may still be given by the master, with the previous sanction of a British Minister, Consul, and Vice-Consul, or in the absence of any such functionary, then of two respectable merchants, in such cases and under such special circumstances as would by law justify such discharge, it is necessary to inquire what grounds have been held sufficient to justify the master in discharging seamen, and the seamen in quitting the ship, before the termination of their agreement.

It has been shown that deviations as to the course of a voyage from that stated in the agreement, will entitle a seaman to claim his discharge, unless such deviations be provided against as likely to arise, by a special clause in the agreement. Refusal of necessary provisions has been determined to be a suffi-

\* 5 & 6 W. IV. c. 19, s. 41.

cient ground for a seaman leaving the ship. In the case of the "Castilia," the judgment concludes in these words:—"The men had no breakfast, and there was the same prospect with regard to dinner. I am therefore of opinion that the departure of the seaman was justified, and that he is entitled to his wages."\* Neglect of duty, disobedience of orders, and habitual drunkenness, are grounds to justify the discharge of a seaman during a voyage;† and Lord Stowell, when speaking of mutinous expressions used by a seaman, including a refusal to obey orders and to submit to be controlled by the captain, intimated that it was the duty of the latter, "as it was within his power, to give himself redress by an immediate discharge of the seaman."‡

The Act contains explicit directions as to the disposal of seamen whenever a ship shall be sold at any foreign port, but there are other cases not provided for by the Act, in which a discretion must necessarily be exercised by the master, with the previous sanction of such functionary or merchants as aforesaid;|| and the case of the "Elizabeth," decided in the Court of Admiralty in 1819, affords "a rule of authority," to be "applied to the dis-

\* 1 Hag. A. R. 62.

† Abbott, 472.

‡ 2 Hag. A. R. 19.

|| See page 53.

cretionary powers of a master" in such cases, which will also guide such functionary or merchants in giving or refusing their sanction.\*

The ship on her passage home from St. Petersburg to Portsmouth ran on shore on the Isle of Gothland. The crew, with assistance, got her off in a damaged state, and carried her into port for repairs, which could not be completed whilst the season for navigating the Baltic lasted. Under these circumstances, the master proposed to the crew, that they should be discharged and return to England, in order to save the expense of maintaining them during the whole winter there. The crew remonstrated and stated to him that, having signed articles for the whole voyage, they were entitled to remain by the vessel and to return in her to England; upon which he repeated his determination of sending them home, stating that from that day they were no longer to consider themselves as belonging to the ship, or under his charge; and that he had provided carriages to convey them and their luggage to Wisby. The crew were consequently compelled to proceed to Wisby, where the agents of the vessel supplied them with a pass, which had previously been procured by order of the master, and they there em-

\* 2 Dodson, A. R. 403.

barked for London, where they arrived in January. They applied to the owners for the wages which they insisted were due, up to the time of the ship's return to England, which was not till the April following. The owners contended that the crew had voluntarily accepted their discharge, and that they were bound to pay only up to the time of the actual discharge so accepted by the crew. The learned Judge, Sir W. Scott, decided that it could not be deemed a voluntary acceptance of a discharge, because it was proposed in a form that admitted of no liberty of refusal, but was a choice of evils of which a man is compelled to take one; it was only in the alternative that if they did not accept their discharge, they must starve in the foreign country. He then proceeded to the main question as to the master's "right to dismiss the mariners upon proper conditions, and with a due responsibility for the performance of such conditions," and said, "I confess it appears to me, that the circumstances in which this vessel was placed did vest in him an authority to discharge his crew, upon proper conditions. I know and feel the partiality which the maritime law entertains for this class of men, but it must not overrule all consideration of justice to other classes, particularly to merchants, their employers; for what is oppressive to the merchant cannot but be injurious to the mariner. The seaman cannot



be ultimately benefited by that which, as far as it operates, must operate to the discouragement of navigation.

“It has been said that the master can have no right to dissolve the contract, because the seamen cannot; and one party cannot be bound and the other loose: this mutuality is not a quality adhering to this species of contract throughout—not even in its commencement. A mariner signs a contract for a particular voyage; he cannot decline to go; he is exposed to heavy penalties if he does. But, how is the master bound for the owners? He may change his mind at any time before he quits Port; he may vary the voyage—the seaman cannot compel him to proceed upon it; all he can require is to be paid for the time he has served the ship in port, if he does not choose to accompany her on her new destination. The law allows, and justly allows, a greater discretion to the one party than to the other, for the one stipulates for his own labour—the other not only for the labour, but for the beneficial employment of valuable property confided to him by his owners, and subject to their direction.

“I have looked with some anxiety to find, if possible, a decided case, or a rule of authority, that could be applied to the discretionary powers of a

master in such circumstances ; but I have found none. The cases where the rule has been provided for, are those where the seaman has been wrongfully discharged. There he has in most countries a right to charge up to the time of the return of the vessel to her original port. Such is the rule of the civil law. These, however, are cases where there was tyranny, passion, and injustice on the part of the master, that warranted a penal retribution against him or his owners. But here is a case arising from mere misfortune, and approaching to almost a necessity. The rule to be applied must not be founded upon any idea of penal retribution, but upon just ideas of a fair protection to be given to the seaman, under the casual and common misfortune that has occurred. See what his real damage and loss has been ; compensate that, and then real justice and all honest policy is satisfied.

“Take the ship when it came in this shattered condition into the Isle of Gothland. Suppose there happened to be at that time a ship bound to the port of London, ready to depart, but wanting a crew ; that this ship accepted this crew, and upon the same terms ; and that the ship so navigated comes to England in the ordinary course of such a voyage, what damage can be assigned by the mariners in such a case ? They return to their own country, at the same wages and in the same

time, which they contemplated in their contract. It is a mere change of *vehicle*, not of *interest*. Surely no Court would uphold them in their claim to stay by their own unfortunate ship, and to make a profit out of the misfortunes of their owners, if their owners were willing to discharge them. In this case there was certainly no such ship offered; but supposing them to be carried at the expense of their owners to a port, where a ship offered to convey them to their country, not as crew, but as passengers, what is their just claim? Certainly, in the first place, to have their passage paid—that is out of all question; and if their wages are likewise paid by their owners up to the time at which they are landed in their own country, how are they damnified? They have all that they could have under their first contract; they are set down where they were taken up in their own country, and with the same money in their pockets, and open for fresh employment. I am, therefore, clearly of opinion, that they have no right to charge, as they have done in this case, for wages up to the return of the ‘Elizabeth.’ I think the master had a right to discharge them under such circumstances of extreme pressure. They did right by acting upon this discharge, and if they are paid their passage and their wages up to the time of their return, they have all they can demand against their innocent owners. In this I go quite as far as the partiality of the

law for this class of men will carry me; to go further would be to gratify an unwarrantable pretension. This is the rule which I am disposed to extract, from considerations of private equity and public policy, in a case not provided for by any existing regulation, either in the ordinances or decisions of this country, or in the books of authority given to the world by ancient jurists."

In furtherance of the intention of the Legislature, that except in the case of entering into the navy, no person of the crew shall be discharged either with or without his consent at any place abroad, unless with the sanction of a public functionary, or in the absence of such functionary, of two respectable merchants resident there, the 42nd section enacts, that no "master shall be at liberty to leave behind at any place abroad, either on shore or at sea, any person of his crew, on the plea of such person not being in a condition to proceed on the voyage, or having deserted from the ship or otherwise disappeared, unless upon a previous certificate in writing of one of such functionaries or merchants as aforesaid, if there be any such at or within a reasonable distance from the place where the ship shall then be, if there be time to procure the same, certifying that such person is not in such condition, or has deserted or disappeared, and

cannot be brought back; and all such functionaries as aforesaid are authorised and required, on the application of any master, to inquire by examination on oath into the circumstances, and to give or refuse such certificate according to the result of such examination.”\* In case of desertion or absence from the ship in any of His Majesty’s dominions abroad, any Justice of the peace may, upon complaint on oath of the master, cause the absent seaman to be apprehended and dealt with in the same manner as he is liable to be treated at home for the like cause.† Such complaint should always be made by the master if he can find a Justice of the Peace near enough, so that a warrant may be issued and placed in the hands of a proper officer for the apprehension of the seaman. The master will then have done all that the law enables him to do, and if the seaman cannot be found, he will readily obtain the necessary certificate, and secure himself from a prosecution, to which he would otherwise be liable. The master’s proceedings should be entered in the Log-book, and certified (as before explained) by him, and also by the mate or some other credible witness, and when any question shall arise as to payment of the seaman’s wages, the fact of desertion will be thus clearly established, and the forfeiture of wages easily enforced.

\* 5 & 6 W. IV. c. 19, s. 42.

† Page 43.

There are some cases in which a master may have a difficulty in determining whether the seaman's absence from the ship should be treated as desertion, or simply as absence without leave, and for his guidance a few instructive cases, which have been decided in the Admiralty Court and the superior Courts of Law, are here briefly collected.

A man, hired as carpenter, arrived in a ship at Tangier, and was permitted by the master to go on shore upon the application of the British Consul, to perform some services required of him, where he remained a considerable time; he was afterwards required by the master to return to his ship, but distinctly and positively refused to return to his proper duty. Lord Stowell held that the permission of absence that was given to him, was to be considered as accompanied with an implied obligation of return, and refused to countenance his claim for wages. This was therefore treated as a case of desertion.\*

So in the case of a mariner, who left his ship at Jamaica, in consequence of having been told by the mate to go on shore, but who was ordered by the master to return and did not,—it was held to be desertion.†

\* 1 Hag. A. R. 167.

† 2 Hag. A. R. 227.

But where a seaman had leave to go on shore, for a stated period, and getting drunk, did not return to the ship, but was carried before a magistrate and charged with desertion, Lord Stowell said, "It no more resembles that than it does a robbery or a murder. The seaman had left his clothes on board and made no preparation for desertion, and his conduct on shore was the very reverse of what must have been the conduct of men meditating an escape." \*

If seamen go on shore on the ship's duty, and when the boat is about to return, request to be permitted to remain on shore to get some victuals, which is refused, and the boat goes without them, if they afterwards go and offer to return to their duty on board the ship, it is not desertion.†

The Act of Parliament furnishes a plain and simple rule by which to distinguish cases of mere absence without leave from those of desertion, by declaring, that "an absence of a seaman for any period whatever, however short, *under circumstances plainly shewing that it was his intention not to return thereto*, shall be deemed an absolute desertion."‡

\* 2 Hag. A. R. 22.    † Sigard v. Roberts. 3 Esp. 71.

‡ 5 & 6 W. IV. c. 19, s. 9.—The Court of Queen's Bench seems to have acted upon a similar principle in the case of

Absence without leave immediately before the sailing of a ship is regarded as a more serious offence than at any other time. At such a time absence without leave, however short it may be, is treated as desertion, whatever may be the intention of the seaman; for the Act has in express terms declared, that "an absence of a seaman from the ship *for any time* within the space of twenty-four hours immediately preceding the sailing of the ship without permission from the master thereof, shall be deemed an absolute desertion."\*

In the case of any person of the crew not being in a condition to proceed on the voyage, who may be left on shore at any place abroad under a certificate of one of such functionaries or merchants as aforesaid, the master is required to "deliver to one of the said functionaries, or if there be none such; to any two respectable merchants there; or if there be but one, then to such one merchant,

*Fillieul v. Armstrong*, 7 Adol. and Ell. 557, where a school-master's assistant, who ought to have returned to the duties of the school on a particular day after one of the usual vacations, did not return until two days afterwards, whereupon the master dismissed him; and the Court held, that although the assistant would be liable to the master for any injury sustained by the breach of engagement, yet the master was not justified in putting an end to the contract.

\* 5 & 6 W. IV., c. 19, s. 9.



a just and true account of the wages due to such person, and pay the same to the seaman either in money, or by a bill drawn upon the owner of his ship; and if by bill, then such functionary or merchant, according to the case, is authorised and required by certificate indorsed on such bill, to testify that the same is drawn according to the Act, for money due on account of wages of a seaman, or to that effect; and any such master who shall deliver a false account, or refuse or neglect to deliver a just and true account of the wages due to such person, and to pay the amount thereof in money or by bill as aforesaid, shall for every such offence forfeit and pay, in addition to the wages due, the penal sum of twenty-five pounds.”\*

But public policy requires, and therefore it is provided, that “ nothing in the Act or in any agreement contained, shall prevent any person belonging to any merchant ship whatever from entering into the naval service of His Majesty, and that such entry shall not be deemed a desertion, and shall not incur any penalty or forfeiture whatever.”† And “ when any seaman shall quit a merchant ship in order to enter into His Majesty’s naval service, and shall thereupon be actually received into such service, not having previously committed

\* 5 & 6 W. IV., c. 19, s. 44.

† S. 45.

any act amounting to and treated by the master as a total desertion," it is enacted that such seaman so entering into His Majesty's service, "shall be entitled immediately upon such entry, to the delivery up of all his clothes and effects on board such merchant ship, and (in case the ship shall have earned freight) to receive from the master the payment of the proportionate amount of his wages up to the period of such entry, either in money or by a bill on the owner thereof; all which clothes, effects, money, and bill, such master is required to deliver up to him accordingly, under a penalty of twenty-five pounds for any refusal or neglect, to be recovered, with full costs of suit by such seaman. Provided always, that if no freight shall have been earned at the time of such entry, then the master shall give the seaman so entering a bill upon the owner for his wages to the period of such entry, payable on the ship's safe arrival at her destined port; but in case the master shall have no means of ascertaining the balance justly due, he shall make out and deliver to such seaman a certificate of the period of his services, and the rate of wages he is entitled to, producing at the same time to the commanding or other officer of His Majesty's ship, the agreement entered into with the seaman for the voyage." Upon the delivery up of such clothes and effects, and the settlement of such wages in the manner before

mentioned, the master, for his own protection, is by the Act "entitled to receive from the officer in command of the ship of His Majesty into which such seaman shall have entered, a certificate signed by the said officer, which such officer is required to give upon the request of the master, testifying that such seaman has entered into such ship of His Majesty; to serve as proof that the master had not parted with the seaman contrary to the provisions of the Act."\* This certificate no master should neglect to obtain, for the punishment to which he is subject for unlawfully leaving seamen in foreign parts, is justly severe, and it behoves him to be prepared with proper documents to prove, that in every instance where a seaman shall have been so left, it has been done under circumstances and in such manner as the law permits.

The clause imposing the punishment referred to recites, that "great mischiefs have arisen from masters of merchant ships leaving seamen in foreign parts, who have been thus reduced to distress, and thereby tempted to become pirates, or otherwise misconduct themselves," and enacts, "that if any master of a ship belonging to any subject of the United Kingdom shall force on shore and leave behind, or shall otherwise wil-

\* 5 & 6 W. IV., c. 19, s. 46.

fully and wrongfully leave behind on shore or at sea, in any place in or out of His Majesty's dominions, any person belonging to his crew, before the return to or arrival of such ship in the United Kingdom, or before the completion of the voyage or voyages for which such person shall have been engaged, whether such person shall have formed part of the original crew or not, every person so offending shall be deemed guilty of a misdemeanor, and shall suffer such punishment by fine or imprisonment, or both, as to the Court before which he shall be convicted shall seem meet."\* And "in all cases where any master shall have forced on shore or left behind any person against the provisions of this Act, who shall become distressed and be relieved under the provisions of an Act passed in the eleventh year of King George IV.,† or under any Act hereafter to be passed, then in addition to the wages due from and the penalties imposed on such master, His Majesty shall be entitled to sue such master, or the owner of the ship, for all the charges and expenses which shall have been incurred on the subsistence, necessary clothing, and conveyance home of any such per-

\* 5 & 6 W. IV. c. 19, s. 40. The stat. 9, Geo. IV. c. 81, contains a similar enactment, which is unnecessary to be inserted here, it being substantially re-enacted in the 5 & 6 W. IV., c. 19, s. 40.

† See page 71.

son, which, together with full costs of suit, may be recovered in the same manner as other debts due to His Majesty are recoverable."\* In the event of any indictment or proceeding under the clauses last mentioned, in a case where a seaman may have been discharged with the sanction of the functionaries before named, (which, though not probable, is possible,) the master will have to prove that he obtained such sanction in writing; or in a case where he may be prosecuted for leaving behind a seaman who shall have been unfit to proceed on the voyage, or have deserted or otherwise disappeared, or have entered into His Majesty's navy (which is also a very possible case), the master will have to produce and prove such certificate as he is required to obtain from one of such functionaries or merchants as aforesaid, or from the officer in command of His Majesty's ship on board of which such seaman shall have entered. Therefore it is pressed upon the attention of masters as a matter of great importance that they should in all such cases obtain and carefully preserve the necessary documents.

We have seen that if seamen left behind shall become distressed, and be relieved, the master or owner may be sued for the subsistence, necessary

\* 5 & 6 W. IV. c. 19, s. 47.

clothing, and conveyance home of any such person. It may therefore be as well here to state the provision made for the relief of distressed seamen in foreign parts or places.

The statute 11 Geo. IV., c. 20, s. 82, enacts, that the "Governors, Ministers, Consuls, and other officers of His Majesty in foreign parts, and in places where there shall be no such then any two British Merchants there residing, shall and they are thereby authorized, directed, and required to send for and provide for all such seafaring men and boys being subjects of the United Kingdom, who shall, by shipwreck or by any other means, or from any cause whatever, be driven to or cast away or left, or be in distress at, any such foreign parts or places, or who shall have been discharged from any of His Majesty's ships, and they and every of them are thereby required to provide for and subsist all such seafaring men and boys, and for so doing they shall be allowed so much *per day*, as hath been or shall be in this respect authorized by the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral, for the amount of which disbursements they shall send bills, together with proper vouchers, to the (said) Commissioners,\* in order

\* The powers and duties vested in the Commissioners of the

that after due examination of such vouchers, payment of the amount thereof may be made to them ; and the said Governors, Ministers, Consuls, other officers, and merchants, shall cause such men and boys to be put or sent on board the first or any ship or vessel belonging to any subjects of His Majesty which shall be bound from thence or from the neighbourhood to any part of the United Kingdom, and shall be in want of men to make up their complement : and if there shall be no such ship in want of men within a convenient time, then they shall provide and order a passage home for such seafaring men and boys in the first ship or vessel of His Majesty's subjects bound to any part of the said United Kingdom ; and every master or other person having the charge of any such ship or vessel shall and he is thereby required to receive and afford a passage and subsistence during the voyage to all such seafaring men and boys as shall be so sent on board his ship, not exceeding four for every 100 tons of his ship's burthen ; and every such master on the production to the (said) Commissioners of a certificate under the hands of any such Governors, Ministers, Consuls, other officers, or merchants, specifying the number and names of the men and boys, and the time when

Navy by the statute 11 Geo. IV., c. 20, are transferred to the Commissioners for executing the office of Lord High Admiral by the Act 2 W. IV., c. 20, s. 1.

they were so received on board ; and upon making [a solemn declaration, which has been substituted for an] oath as to the number of days they were subsisted, and that he did not during that period want of his own complement of men ; or if he did want any, then the number he so wanted of his complement, and for what time he shall be entitled to receive from the said Commissioners an allowance in respect of the subsistence and passage of each such man and boy (exceeding the number so wanting of his complement), according to such rate *per* day as in that behalf hath been or shall be authorized by the said Lord High Admiral, or the commissioners for executing the office of Lord High Admiral as aforesaid ; and in case any master or other person having charge of any such ship shall neglect or refuse to receive on board his ship, and to subsist and give a passage to any such seafaring man or boy, in breach of this enactment, every person so offending shall be liable to a penalty of one hundred pounds for each man or boy he shall so neglect or refuse to receive, subsist, or give a passage to, which penalty shall and may be recovered by information at the suit of His Majesty's Attorney-General in his Majesty's Court of King's Bench or Exchequer at Westminster ; and the Court in which any such information shall be prosecuted, shall be and is thereby authorized to issue a commission or commissions for the examination of witnesses



abroad, the depositions taken under which shall be received in evidence on the trial of such information.

In order to prevent the profitable trade of desertion, which has been carried on in some parts abroad, the owner or master of a ship, who may be under the necessity of engaging any seaman, as a substitute for one who may have deserted in parts beyond the seas, "at a higher rate of wages than that stipulated in the agreement to be paid to the seaman deserting," is entitled to recover from the deserter, by summary proceeding, any excess of wages which such owner or master shall pay to such substitute, beyond the amount which would have been payable to the deserter, in case he had duly performed his service pursuant to his agreement:\* the mode of recovery whereof will be noticed in Chap. iii.

The practice of deserting ships in foreign parts, in order to obtain higher wages on a homeward voyage, should be checked by every possible means in the power of masters; and in all cases of absence without leave, which may happen in any of Her Majesty's dominions abroad, where there are Justices of the Peace, masters should make complaint

\* 5 & 6 W. IV. c. 19, s. 9.

before a Justice against the absent seaman, in order that he may be dealt with according to sec. 6 of the statute 5 & 6 W. IV., c. 19.\*

By making the proper entries in the Log-book, with regard to the forfeiture of wages, and by strictly enforcing the punishment provided by law, much may be done to check the evil: but it should be made a difficult matter for deserters to get shipped in other vessels at the port of desertion; and however inconvenienced masters may be at such port for want of men, they should bear in mind that the less encouragement they give to deserters, the more likely they are to check the pernicious practice, and diminish the general inconvenience to which it subjects them: and here it is fit to remind them of the 10th sec. of the Act, which subjects any person to a penalty of ten pounds, who shall either *on shipboard* or on shore knowingly harbour or secrete a seaman who shall have signed an agreement to proceed on a voyage to parts beyond the seas, and shall have deserted or absented himself without leave from his ship.† Masters must, therefore, take some precautions to protect themselves; and it is suggested that ship-owners and masters trading to Quebec and other places, where a high and extravagant rate of wages prevails, (which is, perhaps,

\* Page 43.

† 5 &amp; 6 W. IV., c. 19, s. 10.

in a great degree caused by the frequency of desertion at such places,) should insert a special clause in the agreement, to be applicable to all seamen shipped at such places, expressly providing that if any such seaman shall be shipped abroad at higher wages than the rest of the crew, and it should afterwards be proved that such seaman shall have then lately deserted from some other ship, he shall receive no higher wages than the rate of wages stipulated to be paid at the commencement of the voyage to the seamen who then agreed to perform the same.

As to the disposal of seamen, in cases when it becomes necessary to sell a ship in foreign parts, it is enacted, "that whenever any ship whatever belonging to any subject of the United Kingdom, except in cases of wreck or condemnation, shall be sold at any port out of His Majesty's dominions, the master in all such cases (unless the crew in the presence of the British Consul or Vice-Consul, or in case of there not being any such Consul or Vice-Consul, then in the presence of one or more British resident merchants at such port, shall signify their consent in writing to be there discharged) shall and he is thereby required, besides paying them the wages to which they shall be entitled under the agreement, either to provide them with adequate employment on board some other British vessel

homeward bound, or to furnish the means of sending them back to the port in His Majesty's dominions at which they were originally shipped, or to some port in the United Kingdom, as shall be agreed upon, by providing them with a passage home, or depositing with the Consul or Vice-Consul such a sum of money as shall be by him deemed reasonably sufficient to defray the expenses of their subsistence and passage; and if the master shall refuse or neglect to do so, such expenses when defrayed shall be a charge upon the owner whose ship shall be so sold, except in cases of barratry, wreck, or condemnation, and may be recovered against such owner as so much money paid and expended on his account, together with full costs, at the suit of the Consul or other person defraying such expenses, or of His Majesty's Attorney-General, on behalf of His Majesty, in case the same shall have been allowed to the Consul out of the public monies.\*

“ And in order that due care may be taken of the effects of British seamen dying in foreign parts, and that a proper disposition may be made thereof, it is enacted, that whenever a British seaman being abroad shall die elsewhere than on board a British ship, leaving any money or effects

\* 5 & 6 W. IV., c. 19, s. 17.

within the limits of any British Consulate, it shall be lawful for His Majesty's Consul there, and he is required to claim and take charge of all such money and effects, and to dispose of the said effects for the benefit of the next of kin of the deceased, or other person who may be by law entitled to the same; and in case no claim shall be made to the same within three calendar months after the death of such seaman, the said Consul shall, after abating the amount of any expenses which shall have been incurred in getting in the assets of the deceased, remit the balance of all such monies which shall arise by the means aforesaid, to the President and Governors of the Corporation 'for the relief and support of sick, maimed, and disabled seamen, and of the widow and children of such as shall be killed, slain, or drowned in the merchant service.' " \*

By the statute "for registering Births, Deaths, and Marriages in England,"† if any child of an *English* parent shall be born at sea, on board of a British vessel, or if any of His Majesty's *English* subjects shall die at sea, on board of a British vessel, the captain or commanding officer of the vessel on board of which the said child shall have been born or such death shall have happened, shall forthwith

\* 5 & 6 W. IV., c. 19, s. 25.

† 6 & 7 W. IV., c. 86, s. 21 & 26.

make a minute of the several particulars required in the statute to be inserted in the register according to the forms (Appendix, Nos. 4 and 5 respectively), touching every such birth and every such death, as the case may be, so far as the same may be known and the name of the vessel wherein the birth or death took place, and shall, on the arrival of such vessel in any port of the United Kingdom, or by any other sooner opportunity, send a certificate of the said minute through the Post-office to the Registrar-General of Births, Deaths, and Marriages in England, who shall file the same, and enter a copy thereof under his hand in a book to be kept for that purpose in "The General Register Office," to be called the "Marine Register Book," and shall keep the said book with the other Registers according to the provisions of the Act.

The behaviour and demeanour of the master and seamen of a vessel towards each other during the voyage, is a matter of great importance and deserves to be fully considered.

It has been declared by a very high authority, that "by the common law, the master has authority over all the mariners on board the ship, and it is their duty to obey his commands in all lawful matters relating to the navigation of the ship, and the preservation of good order:" and that "in case of

disobedience or disorderly conduct, he may lawfully correct them in a reasonable manner; his authority in this respect being analogous to that of a parent over his child, or of a master over his apprentice or scholar. Such an authority is absolutely necessary to the safety of the ship and of the lives of the persons on board. But it behoves the master to be very careful in the exercise of it, and not to make his parental power a pretext for cruelty and oppression. Except in cases requiring his immediate interposition, he should take the advice of the persons next below him in authority, as well to prevent the operation of passion in his own breast, as to secure witnesses to the propriety of his conduct. For the master, on his return to this country, may be called on by action of law, to answer to a mariner who has been beaten or imprisoned by him, or by his order, in the course of a voyage; and for the justification of his conduct, he should be able to show, not only that there was a sufficient cause for chastisement, but also that the chastisement itself was reasonable and moderate, otherwise the mariner may recover damages proportionate to the injury received;”\* or he may be indicted and tried at the Central Criminal Court, which assembles every month at Justice Hall in the Old Bailey, as for an offence committed at sea within the jurisdiction of

\* Abbott, 136.

the Admiralty of England; or he may be brought before two magistrates, who, by the 38th section of the 5 & 6 W. IV. c. 19, have power to hear and determine any complaint of assault "committed on board any merchant ship belonging to any subject of the United Kingdom in any place at sea, or out of His Majesty's dominions," and to inflict a fine not exceeding five pounds for any such offence, if brought before them within three months after the offence was committed.\* "If," says Lord Tenterden, "the master strike a mariner without cause, or use a deadly weapon as an instrument of correction,

\* 5 & 6 W. IV. c. 19, s. 38.—This limitation of the magistrate's summary jurisdiction to three months *after the date of the offence* is in the statute 9 Geo. IV., c. 31, which first gave to magistrates summary jurisdiction over assaults committed on land. By the 5 & 6 W. IV., c. 19, s. 38, that jurisdiction is extended to any assault committed "on board any merchant ship belonging to any subject of the United Kingdom in any place at sea or out of His Majesty's dominions, subject, however, to such provisos and limitations as are contained in the said Act (9 Geo. IV.), with respect to the cases of assault and battery therein mentioned." The limitation of time applied to offences on land is not adapted to offences committed at sea; for they often occur during a long voyage, and the period of three months frequently expires before the arrival of the ship in a port of the United Kingdom. Indeed, when they happen during voyages from China, the East Indies, and places beyond the Cape of Good Hope, the 38th section is almost nugatory; and perhaps, if the Act should ever be revised by the Legislature, it may be thought expedient to extend the time to three months after the ship's arrival in a port of the United Kingdom.



where moderate correction may be inflicted, and death ensue, he will be guilty either of manslaughter or murder, according to the rules and distinctions of the criminal law of England in analogous cases, all of which are applicable to persons in this situation. In the case of actual and open mutiny by the crew or any part of them, the resistance of the master becomes an act of self-defence, and is to be considered in all its consequences from that point of view.

“ But although the master may by force restrain the commission of great crimes, he has no judicial authority to punish the criminal, but ought to secure his person, and cause him to be brought before a proper tribunal of his country.”\*

Thus has the law, as to the treatment of mariners on board a merchant ship by the master thereof, been clearly expounded by a most learned and excellent Judge, and it would be superfluous to add any thing upon the subject, if this book were intended for the legal profession; but as it is intended chiefly for the information of masters of vessels and other nautical men, who are often required to act with promptitude and energy in cases of sudden emergency, it may be proper to go

\* Abbott, 137.

a little more into detail, in order to give them a correct knowledge of the power entrusted to them by law, and of the discreet, judicious, and temperate manner in which they are required to exercise it.

The power given to the master is rather to restrain his seamen from the commission of offences than to punish them for offences already committed. It is absolutely so with regard to all great offences,—that is, all acts which are crimes against the laws of England. In respect of these, the master cannot inflict any, even the least punishment, but he may and ought to restrain the offender, and so secure him that he may be brought home and tried before “a proper tribunal of his country” for his offence; but the restraint or confinement by the master should not be more severe or close than may be necessary for “the safety of the ship, and of the lives of the persons on board,” and the safe custody of the offender. With regard to smaller offences, that is to say, such as are merely contrary to discipline and good order, although the law allows the master to correct in a reasonable manner if it be absolutely necessary to the safety and discipline of the ship, yet as it behoves him to be very careful in the exercise of such power, it would be well for him always to use it more in the way of restraint than of pu-

nishment. If, for instance, the offence be drunkenness or temporary violence, he may restrain the offender by confinement till sobriety or quiet demeanour justify the removal of the restraint, and then assembling the crew and pointing out the impropriety of the offender's conduct, ascertain by the effect produced whether enough has not already been done, and whether any reasonable apprehensions of mischief can be entertained, if the offence be passed over without further notice. In general it would be better to avoid the infliction of corporal punishment, which can seldom be resorted to without engendering a spirit of dissatisfaction and insubordination, and rendering the progress of the after voyage one of mutual distrust and annoyance; but if such punishment should be deemed by the master and his officers absolutely necessary "to the safety of the ship and of the lives of the persons on board," great care must be taken that it be not excessive or vindictive, and that it be governed more by the probability of serious consequences resulting from the offence than by the character of the offence itself. It is not, however, intended to recommend that punishment should be disproportionate to the offence; but, that even a great offence should be visited with moderate punishment, unless the circumstances of probable danger to the ship or crew render severity indispensable. It should be distinctly understood,

that a hasty or intemperate blow given by the master cannot be justified. There are doubtless many provoking acts and many causes of excitement which, in the heat of the moment, sometimes throw masters off their guard, and all such circumstances of provocation or extenuation are taken into due consideration by the proper tribunals of this country in the administration of the law and the distribution of punishment; but the law itself is too watchful over the safety of all to allow the slightest violence to be done to the person of any, except in self-defence, or for the safety of the ship and the lives of the persons on board. And if the master be not allowed to inflict a hasty or intemperate blow, still less can a mate or other person on board be excused for any such violence. The mate or officer in charge of the ship, in the absence of the master, may exercise the power of restraining any person on board, if "necessary to the safety of the ship and the lives of the persons on board," but he should reserve the question of punishment for the judgment of the master, who is to act in concert with his officers.

Some instances of punishment or restraint have occasionally happened, for the justification of which masters have fully relied on being able to prove acts of mutiny; but on their arrival in port, and on a legal investigation taking place, the acts com-

mitted have been found not to amount to mutiny, and the masters have been left to the peril of an action for false imprisonment. It is therefore necessary for them clearly to understand what is *mutiny* in the eye of the law. The words of the statute 11 & 12 W. III., which embraces other piratical acts besides those which are commonly expressed by the term mutiny, are these: —“ If any commander or master of any ship, or any seaman or mariner, shall betray his trust, and turn pirate, enemy, or rebel, and piratically and feloniously run away with his or their ship or ships, or any barge, boat, ordnance, ammunition, goods, or merchandizes, or yield them up voluntarily to any pirate, or shall bring any seducing messages from any pirate, enemy, or rebel, or consult, combine, or confederate with, or attempt or endeavour to corrupt any commander, master, officer, or mariner, to yield up or run away with any ship, goods, or merchandizes, or turn pirate, or go over to pirates, or if any person shall lay violent hands on his commander whereby to hinder him from fighting in defence of his ship and goods committed to his trust, or shall confine his master, or make or endeavour to make a revolt in the ship, shall be adjudged, deemed, and taken to be a pirate, felon, and robber.”\*

\* 11 & 12 W. III., c. 7, s. 9.

The acts which are to be treated as felonious and piratical offences are thus clearly defined; no others fall within that class except such acts as if done on shore would be felonies, and unless the conduct of a seaman be such as to come clearly within the foregoing section a master will not be justified in putting him in irons, and bringing him home in confinement as a felon, on the ground of *mutiny*. There are acts of a mutinous character for which the proper punishment would be the forfeiture of wages, but they should be carefully distinguished from such as are declared by law to be piracy. A seaman may strike his master, or refuse to perform his duty, without having an intention *to make a revolt in the ship*: neither of those acts would by itself amount to a felonious and piratical act of mutiny—the former act would be an assault, (though certainly not a slight offence,) for which the master might restrain the seaman, and proceed against him according to law on his arrival in port; or if necessary for the safety of the ship, the master might punish him, subject to the cautions already given as to the manner and degree of punishment;—the latter would be a breach of the seaman's agreement, for which he is to be punished by forfeiture of wages during the time of his refusal to work: but if he go further, and by his conduct or language show an intention to deprive the master of his control over the ship, or say or do any thing

to induce the crew or any of them to take such control from him, then the seaman would be guilty of an endeavour to make a revolt in the ship; and the master should take instant measures to suppress it. In such a case the law arms a master with all the protection that it throws around a person placed in a position of self-defence by the acts of others. He should be firm, but temperate, and avoid the sacrifice of life and the infliction of bodily harm if possible; but, if necessary, he should *by force* restrain the offenders, and secure them to be tried by a proper tribunal. If death should be the consequence of the necessary force used by the master in restraining or resisting those who feloniously make, or endeavour to make, a revolt, he would be clearly exonerated; but not so if he cause death in resisting a mere assault; and still less would he be excused, if he cause it by violence inflicted on a seaman for a mere refusal to do duty—in these cases he would be guilty either of manslaughter or murder, according to the rules and distinctions of the criminal law of England.\* It is not, however, to be supposed that the law does not justify resistance, to a certain extent, in the case of a common assault, for it recognizes the right of self-defence in every instance, but the amount of lawful resistance

\* Abbott, 176.

is to be measured by the necessity of the case, and the time and circumstances attending it. Masters would best support their authority in cases of simple assault, by abstaining from the use of personal violence or retaliation, and by ordering the offender to be confined until a sufficient interval shall have elapsed to allay the excitement generally produced. If masters enter into personal conflict in such cases, besides the effect it must have in lowering and weakening their authority, they expose themselves to the chance of inflicting, through heat of blood, more violence than may be necessary in self-defence, for which the law will hold them responsible. "In all acts of discipline and authority passion is a bad counsellor; care is to be taken to suppress even natural and honest feelings of resentment, which may have the effect of transferring a share of the blame belonging to the transaction to the other side of the question."\*

Seamen have sometimes been brought home in confinement upon charges of *stealing* or *embezzlement*, of which, when investigated, there has not been sufficient proof. In all cases of this description, the master should ascertain whether he can produce witnesses on his arrival in port to prove the guilt of the accused seaman. If there be a bare

\* 1 Hag. A. R. 216.



the guilt of the accused seaman. If there be a bare suspicion only, or if the offence be trivial, it would be better to avoid putting him in confinement. There are some offences, however, for which the offender must be restrained—such as malicious stabbing, cutting, or wounding. An offender cannot safely be trusted at large after an offence of this description has been committed or attempted; but for stealing or embezzlement it may be generally sufficient to restrain him only in ports or places where he might otherwise have an opportunity of going ashore and escaping.

To prevent fraudulent connivance with pirates, a statute was passed in the reign of Charles II., by which the master of any vessel of a burthen of 200 tons or upwards, and mounted with 16 guns, is forbidden to yield his cargo to pirates of any force without fighting, on pain of being rendered incapable to take charge of any English vessel afterwards. By the same statute it is enacted, “that every mariner or inferior officer of any English ship, laden with goods and merchandizes, who shall decline or refuse to fight and defend the ship when thereunto commanded by the master or commander thereof, or shall utter any words to discourage the other mariners from defending the ship, shall lose all his wages due to him, together

with such goods as he hath in his ship, and suffer imprisonment not exceeding the space of six months, and shall during such time be kept to hard labour for his or their maintenance.”\*

The same statute in order to encourage the resistance which it requires, provides a mode of raising sums of money, not exceeding two pounds per centum of the freight and of the ship and goods so defended, which shall be distributed among the captain, master, officers, and seamen of the said ship, or widows and children of the slain.†

The laws for the punishment of persons setting fire to and otherwise maliciously damaging or destroying ships, and making it a felony to prevent or impede by force any person endeavouring to save his life from any ship in distress or wrecked, stranded, or cast on shore, will form the conclusion of this Chapter.

By statute 1 Victoria, c. 89, s. 4, it is enacted, “that whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be en-

\* 22 & 23 Car. II. c. 11, s. 7.      † S. 10.

dangered, shall be guilty of felony, and being convicted thereof shall suffer death."

By section 5 of the same statute it is enacted, "that whosoever shall unlawfully exhibit any false light or signal with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing tending to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and being convicted thereof shall suffer death."

And by section 6, "whosoever shall unlawfully and maliciously set fire to or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and being convicted thereof shall be liable to be transported for life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years.

By statute 7 & 8 G. IV. c. 30, s. 10, "if any person shall unlawfully and maliciously damage, otherwise than by fire, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same, or to render the same useless, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be whipped once, twice, or thrice, in addition to such imprisonment."

By statute 1 Victoria, c. 89, s. 7, "whosoever shall by force prevent or impede any person endeavouring to save his life from any ship or vessel which shall be in distress or wrecked, stranded or cast on shore, (whether he shall be on board or shall have quitted the same,) shall be guilty of felony, and being convicted thereof shall be liable to be transported for life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years."

By s. 8, "whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, shall

be guilty of felony, and shall be liable to be transported for any term not exceeding fifteen years, nor less than ten years, or to be imprisoned for any term not exceeding three years."

### CHAPTER III.

#### OF THE MATTERS WHICH REQUIRE TO BE CONSIDERED AND OBSERVED AT THE END OF A VOYAGE.

THE entries in the Log-book respecting the conduct of the seamen must be kept up after the ship's arrival in the port of delivery, and until the discharge of the cargo; for if they previously absent themselves without leave, or quit the ship without permission *from the master*, no forfeiture can be enforced against them on account thereof, unless proper entries in the Log-book of such absence or quitting the ship be produced and verified.

The owner or master of every ship arriving from parts beyond the seas, "shall, on reporting his ship's arrival at her port of destination in the United Kingdom, deposit or cause to be deposited with the Collector or Comptroller of the Customs at such port, a true copy of the agreement [entered into with the seamen], attested by the signature of the master, to the intent that every person who may be interested in any such agreement

may at all times have the means of knowing the terms and conditions thereof;\* and "if any master shall neglect to deposit a copy of the agreement with the Collector or Comptroller of the Customs, or shall wilfully deposit a false copy of any such agreement, he shall for every such neglect or offence, forfeit and pay the sum of fifty pounds."†

By statute 6 & 7 W. IV., c. 86, ss. 21 & 26, the master on his arrival in any port of the United Kingdom is required to send through the Post-office to "the Registrar-General of Births, Deaths, and Marriages in England," the certificate of births or deaths which shall have happened during the voyage, if any, in the proper forms (Appendix, Nos. 4 and 5), unless he shall have forwarded such certificate at a sooner opportunity.

By statute 4 & 5 W. IV., c. 52, s. 9, the master, commander, or other person having the care of a ship or vessel, shall, if required, sign a duplicate of the Muster-roll, which shall be delivered to the Collectors or Receivers of the Merchant Seamen's duties, at whatever port in Great Britain or Ireland any such ship or vessel shall report or discharge her cargo, and a penalty of five pounds is imposed upon every such master, commander, or

\* 5 & 6 W. IV., c. 19, s. .

† S. 4.

other person as aforesaid, who shall neglect or refuse to deliver such duplicate as aforesaid.

By statute 5 & 6 W. IV., c. 19, ss. 21 & 22, "the master of every ship belonging to any subject of His Majesty, and bound to parts beyond the seas," except ships regularly trading or making regular voyages to any of the Islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any port on the continent of Europe, between the river Elbe inclusive and Brest, "shall not only keep the book required by way of Muster-roll, but shall, on reporting his ship on her arrival at her port of destination in the United Kingdom, deliver or cause to be delivered to the Collector or Comptroller of the Customs at such port an account, signed by himself, of all the seamen and others (including apprentices) who shall have belonged to the ship at any time during her absence from the United Kingdom, which account shall contain a true and correct return under their respective heads of the several particulars expressed in the form set forth in the schedule to the Act (Appendix, No. 6).

In the cases of ships employed in fishing on the coasts of the United Kingdom, or in regularly trading from one part of the United Kingdom to another, and of ships regularly trading or making regular voyages to any of the Islands of Jersey,



Guernsey, Alderney, Sark, and Man, or to any port on the continent of Europe between the river Elbe inclusive and Brest, the master is not required to deposit with the Collector or Comptroller of the Customs either a copy of the agreement with the seamen, or an account of the seamen who shall have served on board, but the duty is thrown upon the owners, one of whom is required within *ten days* next after the expiration of every six months ending on the 30th June and 31st December in each year, to "deposit with the Collector or Comptroller of the Customs of the port to which the ship shall belong, a true copy of every agreement which shall have been entered into with any person composing part of the crew thereof within the preceding six months, attested by the signature of such owner ;"\* and one of the owners of every such last-mentioned ship is required, within twenty-one days after the 30th June and 31st December in each year, to deposit or cause to be deposited with the Collector or Comptroller of the Customs of the port to which the ship shall belong, or with the Registrar of Merchant Seamen in London, an account, signed by such owner or by the master, of the voyages in which any such ship shall have been engaged during the preceding half-year ending on

\* 5 & 6 W. IV., c. 19, s. 3.

the respective days above-mentioned, and setting forth the Christian and surnames of the several persons (including the master and apprentices) who shall have belonged to the ship at any time during such periods respectively, which account shall be in the form and shall contain a true and correct return under their respective heads, of the several particulars expressed in the form set forth in the schedule to the Act (Appendix, No. 7).\*

All copies so required to be deposited must be carefully compared with the original documents, for the statute enacts, that "all copies of agreements shall, when the same shall have been so deposited and shall be required to be produced in evidence on the part of any seaman, be received and taken as legal proof of the contents of the agreement."†

"In case any ship as aforesaid shall be lost or sold while absent from the United Kingdom, then an account containing a similar return as required in the several and respective cases before mentioned, which shall be made out up to the period of such loss or sale, shall, by the persons who shall at that time have been respectively owner and master thereof, or by one of them, be delivered or trans-

\* 5 & 6 W. IV. c. 19, s. 22.

† S. 3

mitted to the said Registrar in the Port of London, so soon as he shall be enabled to make such return after the loss and within twelve calendar months at furthest after the sale of the ship.\* And "every such owner or master who shall refuse or wilfully neglect to deliver or cause to be delivered any such list or account as by this Act is required, shall for every such refusal or neglect forfeit and pay the sum of twenty-five pounds."†

The next subjects worthy of the master's attention after his arrival will be the period at which the seamen ought be paid, and the requirements of the law upon their discharge.

By section 11 of the statute, the master or owner of every ship shall pay to every seaman entering into such contract as aforesaid his wages, if the same shall be demanded, within the respective periods following; that is to say, if the ship shall be employed in trading coastwise, the wages shall be paid within two days after the termination of the agreement, or at the time when any such seaman shall be discharged, whichever shall first happen.‡

The Act has not expressly declared when the

\* 5 & 6 W. IV., c. 19, s. 23.      † S. 24.      ‡ S. 11.

termination of the agreement shall happen; but there is no difficulty in ascertaining the intention of the Legislature, which is in perfect agreement with the general principles of maritime law enforced in a judgment pronounced in the Court of Admiralty. "By interpretation of law, the voyage is not completed by the mere fact of arrival; the act of mooring is an act to be done by the crew, and their duty extends to the time of the unlivery of the cargo. There is no period at which the cargo is more exposed to hazard than when it is in the act of being transferred from the ship to the shore, and therefore the law has enjoined in the strictest manner that the mariners shall stay by the vessel until the cargo be actually delivered."\*

The statute subjects every seaman who shall quit the ship after her arrival at her port of delivery and *before her cargo shall be discharged*, without a previous discharge or leave from the master thereof, to a forfeiture of one month's pay out of his wages, and thereby clearly marks the *delivery of the cargo* as the termination of the agreement.†

The words "termination of the agreement," bear reference only to the form prescribed to be

\* Abbott, 469.

† 5 & 6 W. IV., c. 19, s. 7.

used in vessels trading coastwise, &c. That differs from the agreement for a voyage to parts beyond the seas, as before explained. The coasting agreement is intended to be for continued service by the month, for an indefinite number of voyages, and the termination is controlled by the proviso at the end. "Provided always, and it is hereby declared, that no seaman shall be entitled to his discharge from the ship during any voyage in which she may be engaged, nor at any other than a port in the United Kingdom." Then according to the judgment before alluded to, as "the voyage is not completed by the mere fact of arrival, and the duty of the crew extends to the unlivery of the cargo," the proviso prohibits a seaman, who has signed an agreement in a coasting vessel, from being entitled to his discharge at any place out of the United Kingdom, or at any time, except after the delivery of cargo and before the commencement of another voyage.

"In ships trading otherwise than coastwise, the wages shall be paid, at the latest, within three days after the cargo shall have been delivered, or within ten days after the seaman's discharge, whichever shall first happen."\*

The section having thus fixed the periods within

\* 5 & 6 W. IV., c. 19, s. 11.

which wages are to be paid, (first, with respect to coasting vessels, and secondly, as to ships trading otherwise than coastwise,) goes on to require the payment of a fourth part of the wages due, in some cases where seamen are discharged, at the time of their discharge; but it is not very easy to discover what cases are meant, nor how that part of the section can be put in force on account of its obscurity. The whole section is here stated:—  
“And be it further enacted, that the master or owner of every ship shall, and he is hereby required to pay to every seaman, entering into such contract as aforesaid his wages, if the same shall be demanded within the respective periods following; (that is to say,) if the ship shall be employed in trading coastwise, the wages shall be paid within two days after the termination of the agreement, or *at the time* when any such seaman shall be discharged, whichever shall first happen; and if the ship shall be employed in trading otherwise than coastwise, then the wages shall be paid at the latest within three days after the cargo shall have been delivered, or within ten days after the seaman's discharge, which ever shall first happen; *in either of which last mentioned cases of payment being delayed*, the seaman shall *at the time of his discharge* be entitled to be paid on account, a sum equal to one-fourth part of the estimated balance due to him; and in case any master or owner shall

neglect or refuse to make payment in manner aforesaid, he shall for every such neglect or refusal forfeit and pay to the seaman, the amount of two day's pay for each day not exceeding ten days during which payment shall without sufficient cause be delayed beyond the period at which such wages or part wages are hereby required to be paid as aforesaid; for the recovery of which forfeiture, the seaman shall have the same remedies as he is by law entitled to for the recovery of his wages: Provided always, that nothing in this clause contained shall extend to the cases of ships employed in the southern whale fishery, or on voyages for which seamen, by the terms of their agreement, are compensated by shares in the profits of the adventure."

The obscure part of this section can only apply to cases where seamen who have performed a voyage to parts beyond the seas, may be discharged before the delivery of the cargo, and then it is presumed the Legislature intended to give a discharged seaman a right to an immediate payment of one-fourth part of his wages, upon the principle, that "where the master wrongfully dismisses a seaman, wages are payable immediately;"\* but the language of the section is so contradictory that it

\* Sigard v. Roberts. 3 Esp. N. P. 71.

cannot easily be understood or enforced. It is simply to this effect; the seaman shall at *the time of his discharge* be entitled to one-fourth of his wages if payment be delayed *beyond ten days after his discharge*. How a right can accrue to the seaman at the *time of his discharge* which depends upon a contingency to *happen ten days afterwards*, is not very intelligible.

But all the difficulty arising out of this section will be avoided, by not giving seamen their discharge until after the delivery of the cargo. Before such delivery it is irregular to discharge them; for strictly speaking, the agreement signed between the master and seamen is a contract for the whole voyage, commencing with the day on which the agreement is signed by the seamen, and terminating with that on which the cargo is delivered. The master or owner has no right to discharge a seaman before the delivery of the cargo, and it is not expedient to do so for the reasons before stated,\* and because embezzlement of the cargo may have taken place without discovery until its entire delivery. "If a master, in violation of his contract, discharge a seaman from the ship *during a voyage*, the seaman will be entitled to his full wages up to the prosperous determina-

\* Page 101.



tion of the voyage, deducting, if the case require it, such sum as he may in the meantime have earned in another vessel."\* Nothing short of the delivery of the cargo will establish "the prosperous determination of the voyage," and it would be more consistent with the maritime law not to discharge seamen until the delivery of the cargo; whereby the doubt and uncertainty in which part of the 11th section of the Act is involved may be avoided. A very high authority will be found, in confirmation of what has been suggested, in a recent judgment given in the Court of Exchequer, at the conclusion of which Baron Parke observed, that the seaman's duty does not terminate until the discharge of the cargo, and his payment of wages must be correlative and extend to the same period.†

There is another section to be noticed in connection with the point under consideration. It enacts, "that if after a seaman shall have been discharged from any ship or vessel three days he shall be desirous of proceeding to sea on another voyage, and in order thereto shall require immediate payment of the wages due to him, it shall be lawful for any Justice of the Peace in any part of His Majesty's dominions, on application from such seaman, and on satisfactory proof that he would be prevented from

\* Abbott, 442.

† Page 122.

employment by delay, to summon the master or owner of such ship or vessel before him, and to require cause to be shown why immediate payment of such wages should not be made : and if it shall appear to the satisfaction of such Justice that there is no reasonable cause for delay he shall order payment to be made forthwith, and in default of compliance with such order, such master or owner shall forfeit and pay the sum of five pounds.”\*

If seamen be not discharged until the delivery of the cargo, the period for the payment of wages will be the same under the 14th section as under the 11th, namely, within three days, and masters and owners will not be liable to a proceeding under the 14th section for an immediate payment of wages, before freight shall have been earned, and before it can be ascertained by the delivery of the cargo that no embezzlement thereof has taken place; but if a seaman discharged before the delivery of the cargo should adopt such a proceeding, it would depend upon the construction of the Act in all its parts, whether it is intended to enforce the payment of wages before they are properly ascertained to be due. By the 46th section† the earning of freight is allowed to be the condition on which payment of wages depends, although sec. 44‡

† 5 & 6 W. IV., c. 19, s. 14.    † Page 68.    ‡ Page 66.

is silent on the point ; for if a seaman enter " His Majesty's naval service," he is to receive a proportionate amount of his wages up to the period of such entry, if freight shall have been earned ; but if no freight shall have been earned, then the master shall give the seaman so entering a bill upon the owner for his wages to the period of such entry, payable on the ship's safe arrival at her destined port.

There is nothing in the statute to alter the general principles of law previously existing, by which the right of seamen to their wages was established, and it is apprehended that those principles must be taken into consideration with reference to cases of seamen discharged for valid and sufficient cause, or left on shore from inability to proceed on the voyage, before the earning of freight, and must be applied (as they are by the Act applied in the case of seamen entering Her Majesty's service) to the peculiar circumstances of every case where the service of the seaman has been interrupted. A general rule applicable to every particular case has not been, and perhaps cannot be, laid down. " The cases where the rule has been provided for," said Sir Wm. Scott, " are those where the seaman has been wrongfully discharged. Nothing can be more generally or more peremptorily laid down than that a master discharging a sea-

man wrongfully is answerable for the whole wages of the voyage of that ship.”\*

“ Upon the discharge of a seaman from the ship in which he shall have served, he shall be entitled to receive from the master a certificate of his service and discharge, specifying the period of service and the time and place of the discharge of such seaman, which certificate shall be signed by the master; and if any master shall refuse to give such certificate to any such seaman without having reasonable cause for his refusal, he shall for every such offence forfeit and pay *to him* the sum of five pounds.”†

We are now come to the master's duty in respect to the wages due to the seamen; and it is necessary to state fully the general principles on which the earning and payment of wages depend, and the specific forfeitures to which the seamen are made liable.

“ First, it is obvious that a seaman who has faithfully performed his service on board a ship during the whole period of the voyage, is entitled to receive the whole of the stipulated reward,

\* 2 Dodson, A. R. 409 & 411.

† 5 & 6 W. IV., c. 19, s. 13.

if no disaster has rendered his service useless or unproductive to his employer. And as a seaman is exposed to the hazard of losing the reward of his faithful service during a considerable period in certain cases, so on the other hand the law gives him his whole wages, even when he has been unable to render his service, if his inability has proceeded from any hurt received in the performance of his duty, or from natural sickness happening to him in the course of the voyage. And if a master, in violation of his contract, discharge a seaman from the ship during a voyage, the seaman will be entitled to his full wages up to the prosperous determination of the voyage, deducting, if the case require it, such sum as he may in the mean time have earned in another vessel. A seaman is to be found with provisions as long as he remains on board and is willing to do his duty; if there be a want of sufficient provisions, it is a sufficient justification for his leaving the vessel, and will not deprive him of his right to his wages. In the ordinary case of an embargo, a seaman hired by the month, and remaining with the vessel, has a right to his wages during the embargo, if the ship afterwards perform her voyage and earn her freight. It has been decided that a seaman belonging to a privateer, who was to have a certain share of prizes in lieu of wages, and who had engaged to serve full six months on pain of forfeiting such share,

did not lose his share of a prize taken while he was in the privateer, by being afterwards impressed, and then accepting the bounty, and entering on board one of His Majesty's ships before the expiration of the six months. But entering or being impressed into the King's service does not give the mariner an *absolute* right to his wages up to the time, nor place him in a better condition as to such wages than he would be if he had remained on board the ship; and therefore, if the ship be afterwards captured, he loses his wages in common with those whom he leaves behind.

“ The payment of wages is generally dependent upon the payment of freight; if the ship has earned freight, the seamen who have served on board the ship have in like manner earned their wages. And, as in general, if a ship destined on a voyage out and home has delivered her outward bound cargo, but perishes in the homeward voyage, the freight for the outward voyage is due, so in the same case the seamen are entitled to receive their wages for the time employed in the outward voyage and the unloading of the cargo. And if a ship sail to several places, wages are payable to the time of the delivery of the last cargo. Upon the same principle, where money had been advanced to the owners in part of the freight outward, and the ship perished before her arrival at the port of delivery,

it was held that the seamen were entitled to wages in proportion to the money advanced.

“ In the case of shipwreck it is the duty of the seamen to exert themselves to the utmost to save as much as possible of the vessel and cargo. If the cargo be saved and a proportion of the freight paid by the merchant in respect thereof, it seems upon principle that the seamen are also entitled to a proportion of their wages. There was not until lately any known decision of a British Court on this point. But the question having been brought before the Court of Admiralty, in a case where the parts of a stranded ship were sold for more than sufficient to pay the wages of the seamen, no part of the cargo having been saved, and the seamen having exerted themselves very laboriously to save the parts of the ship, and not having departed until they were dismissed by the master, the learned Judge of that Court, after reviewing and commenting upon the several foreign authorities on the subject, admitted the claim of the seamen, who thereupon received their wages from the owners.”\*

“ The wages of seamen, whether hired by the month or for the voyage are sometimes lost with-

\* Abbott 442, 447, 451.

out any fault on their part, and sometimes forfeited by their misconduct.

“ First, *as to the loss of wages.*

“ In order to stimulate the zeal and attention of this class of persons, who are often engaged in very perilous services, the policy of all maritime states has made the payment of their wages to depend generally on the successful termination of the voyage. If in the course of the voyage a total loss or capture of the ship takes place, the seamen lose their wages. So if the ship become disabled on the voyage. But the wages are not lost by the hypothecation of the ship, nor even by the sale of it, unless the sale be made under the authority of a competent Court; and they are preferred to the claim of the holder of an hypothecation bond. It has been already observed, that they are not lost though the ship be wrecked, if the seamen assist in saving from the wreck sufficient to pay them. Indeed, if the ship be not seaworthy at the outset, and the voyage be discontinued on that account, a seaman is not entitled to *wages*, though perhaps he may maintain a special action against the owner for the recovery of damages.

“ It has been already stated that the payment of wages is divisible, and that if a ship has deli-



vered its cargo at one place, the wages are so far due, although the ship be afterwards taken or sunk. But if a ship sail to one place, in order to take in a cargo there to be conveyed to another place, and having received the cargo accordingly, be taken before its arrival at the place of delivery, nothing is payable to the seamen for navigating the ship to the first place.

“ In the case of capture and re-capture, if the ship perform her voyage and earn her freight, a mariner who has not been separated from her is entitled to his wages upon the footing of the original contract, subject perhaps to a proportionate salvage.

“ But in a case before Lord Kenyon, the master of a vessel which had been seized and restored, claimed his wages for the period of detention, although during that time he had been separated from her; she having afterwards earned her freight. The wages for the voyage exclusive of that period were paid without dispute; and the defendant is reported to have acquiesced under a verdict given against him for the further sum, by reason of a strong opinion expressed by his lordship at the trial in favour of the claim.

“ The ground of decision in this case was fully

discussed on the occasion of the seizure and detention of several British ships in Russia, by the Emperor Paul, in the year 1800. The crews were taken from their ships, and those who were British subjects were treated as prisoners of war. Upon the death of Paul, the ships were restored, and the crews having re-embarked without entering into any new articles, they brought cargoes and earned freight. Upon the whole, the Court of King's Bench, before whom the cause was brought by writ of error, thought, in point of law, that the contract of service was to be considered as having continued and been in force from the time of executing the articles up to and at the period of the ship's arrival at her port of discharge, and the final termination of her voyage there, and that the plaintiff was to be considered as entitled to his wages during the same time."\*

It has been stated, that the payment of wages is generally dependent upon the payment of freight, but there are some cases of exception mentioned in the report of a suit for wages, brought in the Court of Admiralty by the mate of a vessel which had been condemned at Sierra Leone for a breach of the Slave Abolition Acts, against the owners, who objected that freight had not been earned, and that

\* Abbott, 457, 463.

if wages were due they were not liable, since the alleged Act of slave-trading was not in any manner imputable to them. The judgment is thus expressed: "If we look to general principles as they are to be collected from the maritime codes or the practice of other countries, I find that a distinction has been made between those accidents by which voyages may be interrupted and the interests of mariners affected, as dependent on their successful termination, and other causes arising from the acts of the owners or masters. As to the effect of condemnation for illegal trading in cases of common guilt, there would be no room for such a distinction in favour of mariners; but, where they are in no manner implicated in the illegal act, so far as I can learn, the condemnation of the vessel has not been held to work a forfeiture of their wages. I do not find that there has been any adjudged case on this point; but it has been asserted in argument, and not denied, in the Common Law Courts, that if there has been a lading of prohibited goods on board a ship, though it subjects the vessel to a forfeiture, yet it disables not the mariner of a remedy for his wages." The learned Judge referred to some authorities, and quoted from the notes of Sir Edward Simpson a dictum or opinion to the same effect. "In reference to some particular case it is there said, 'No wages would have been due to the mariners if the ship had been taken by the enemy,

or by pirates, or had been cast away; yet, in the present case, the mariners will be entitled to their wages to the time of the seizure of the ship, for where a ship is seized by an ally for want of proper documents, or for a prohibited trade, though no freight may be earned, the mariners not being in fault will be entitled to their wages.' I find also that the same principle prevails in other countries; and if the condemnation of the vessel does not in itself work a forfeiture of the wages, I see no reason for considering it as a bar to the action against the owners; because as the remedy is given to the mariners for their additional security, it would be unjust to deprive them of the benefit of it, merely on the ground that the owners may in the particular case be as innocent as themselves of the illegal act which has occasioned the condemnation of the ship. The Court therefore cannot admit the objection as exonerating the owners from their general responsibility."\*

In another case the following passage is quoted from the work of Mr. Jacobsen on Sea-Laws:—  
"It is a general rule, that freight is the mother of wages; but to this there are several exceptions;" some of them appear to be cases "where the voyage is lost by the fault of the owners, as if the ship be

\* 2 Hag. A. R. 162.

seized for their debt or on account of having contraband goods ;” and Lord Stowell instanced “ the case of ships going out in pursuit of a freight and returning disappointed without a cargo, in which case,” continued his lordship, “ it can never be said that the seamen are not entitled to their wages both on the outward and on the return voyage, though no freight whatever was earned.”\*

*Secondly, as to forfeitures and abatements for misconduct.*

There are several distinct grounds of forfeiture or abatement of wages which require to be separately noticed.

The first is absence without leave. By the 7th section of the Merchant Seamen’s Act it is enacted, “ that if any seaman, after having signed such agreement as aforesaid, or after the ship on board which he shall have agreed to serve shall have left her first port of clearance, and before the period for which he shall have agreed to serve shall be completed, shall wilfully and without leave absent himself from the ship, or otherwise from his duty, he shall (in all cases not of absolute desertion, or not treated as such by the master) for-

\* 1 Hag. A. R. 232.

feit out of his wages to the master or owner of such ship the amount of two days' pay for every twenty-four hours of such absence, and in a like proportion for any less period of time; or, at the option of the said master, the amount of such expenses as shall have been necessarily incurred in hiring a substitute to perform his work; provided that no such forfeiture shall be incurred unless the fact of the seaman's temporary absence shall be duly entered in the ship's Log-book, which entry shall specify truly the hour of the day at which the absence shall have occurred, and the period during which the seaman was absent."\*

The necessity of making accurate entries in the Log-book of all the particulars required by the Act of Parliament has been already stated. It will be useless to attempt to make any deductions of a seaman's wages as and for forfeitures, if the entries in the Log-book do not specify the *time of the seaman's absence*, and if the master be not able in all cases of dispute to substantiate the truth of such entries by the evidence of the mate or some other credible witness.

There is one period at which absence from the ship without leave of the master is subjected to a more

\* 5 & 6 W. IV., c. 19, s. 7.

severe penalty, and that is, "after the ship's arrival at her port of delivery, and before her cargo shall be discharged,"\* during which interval, if any seaman shall quit the ship without a previous discharge or leave *from the master thereof*, he shall forfeit to the master or owner one month's pay out of his wages; but *the fact of his quitting the ship* must be entered or recorded in the ship's Log-book at the time, to enable the master or owner to enforce the forfeiture, and must be substantiated by the evidence of the mate or some other credible witness.\* In this case if the seaman return to the ship, the period of his return should be recorded in the Log-book, so that if it should be required to show the period during which he was absent, such requirement may be complied with; but as the fine is definite in amount—one month's pay—and is incurred by the act of quitting the ship without leave, it seems that an entry of the fact and the time of its occurrence would be sufficient to support the deduction of one month's pay.

Quitting a ship after her arrival in her port of delivery and before she came to the place at which her cargo was to be discharged, was formerly held to be a desertion subjecting seamen to forfeiture of their wages, although by an Act then in force a spe-

\* 5 & 6 W. IV., c. 18, s. 7.

cific forfeiture of one month's pay to Greenwich Hospital was imposed for leaving a ship after such arrival except with a discharge in writing from the master. The law has, however, always contemplated with indulgence "the interests, and even the errors and failures of this class of men;"\* and it has been lately held by the Court of Exchequer, in the case of *M'Donald v. Jopling*, June 5, 1838, that after a ship's arrival at her port of discharge, and before the cargo is delivered, if a seaman absents himself without leave, he subjects himself only to a forfeiture of one month's pay by section 7 of the 5 & 6 W. IV., c. 19, and that his absence cannot be treated as "desertion," so as to work a total forfeiture of wages. The question arose upon an action of assumpsit for a seaman's wages, and the counsel for the plaintiff there contended, that quitting the ship after her arrival in the port of delivery, and before the discharge of the cargo, is not a desertion under section 9, which works total forfeiture, but an offence under section 7, and works only a loss of a month's pay. Lord Abinger, in delivering judgment, said, "On the construction of section 9 it was contended on the one side, that an absolute desertion at any period before the final delivery of the cargo was a forfeiture of all the wages; but on the other side it was argued, that that clause,

\* *Edw. A. R. 92.*



with reference to others, only contemplated desertion either before sailing, or during the stay of the vessel in foreign parts, but not a desertion after arrival at her place of destination ; and reference was made to section 7, where a particular kind of desertion is specially provided for. This latter seems much the more reasonable construction, and we think such an interpretation may be properly given to the two sections. In the old statute, desertion means quitting the ship before the voyage is completed, but we think quitting under the circumstances of the present case should now be attended with the loss of one month's wages only, under the 7th section of the present Act." And Parke B. observed, "that the clause, as to forfeiture of wages, is copied from one statute, and that as to desertion, from another which applied only to desertion *on the high seas*. That meaning is expressly given to the word in statute 2 Geo. II., c. 36, s. 3. The seaman's duty under the statute 5 & 6 W. 4., c. 19, does not terminate until the discharge of the cargo, and his payment of wages must be correlative and extend to the same period."\*

It has been decided that "absence occasioned by the power of a foreign country in which the ship

\* Law Journal Reports, by Chambers. New series. Vol. 7, p. 220. Exchequer of Pleas.

may happen to be, without any fault on the part of the seaman, does not work any forfeiture.”\*

The second ground of forfeiture is neglect of duty. Although a seaman be not absent *from the ship*, yet if he *wilfully*, and without leave, *otherwise* absent himself *from his duty*, and in case he “shall without sufficient cause neglect to perform such his duty as shall be reasonably required of him by the master or other person in command of the ship, the Act subjects him to a like forfeiture” of two days’ pay for every twenty-four hours of such neglect of duty, and in a like proportion for any less period of time; or, at the option of the master, the amount of such expences as shall have been necessarily incurred in hiring a substitute to perform his work.†

To enable the master to enforce this forfeiture the entries in the Log-book should show, not merely that the seaman neglected to perform some particular part of his duty, but that at such a time, specifying the hour of the day, he was absent or neglected his duty, and that he continued absent or to neglect his duty until such a time, stating the hour of the day at which he returned to or resumed his duty; so that on perusal

\* Abbott, 467.

† 5 & 6 W. IV., c. 19, s. 7.

of the Log-book it may be clearly seen for how many hours of absence or neglect of duty he is to be subjected to the prescribed forfeiture; all which entries are to be substantiated in manner before stated.

It would seem that neglect of duty occasioned by drunkenness, whether on board the ship or otherwise, will subject a seaman to this forfeiture created by the 7th section of the Act for absence from duty. Of the question whether *habitual drunkenness* may not induce the forfeiture of his whole wages it will be proper to speak hereafter; but it is in this place fit to consider whether instances of neglect arising from drunkenness may not deprive him of *double the amount* of his wages during the period of such neglect. The clause first applies to absence from the ship, and then embraces cases in which the seaman may not be absent from the ship, but *otherwise wilfully and without leave absent from his duty*. As drunkenness will not serve to extenuate crime or guilt in any case, it cannot be pleaded to excuse a seaman for neglect of duty. If he get drunk and thereby render himself incapable of performing his duty, it is apprehended that he will fall within the words of the clause; and as to the spirit of it there can be no question. The former statutes relating to merchant seamen were treated as enactments auxiliary to the general principles of maritime law, which must be

kept in view to arrive at a correct interpretation of the existing Act; and consistently with those principles, no seaman who may be absent from his duty by reason of drunkenness can be excused from the forfeiture imposed by the Act.

The third ground of forfeiture is desertion. By the 9th section of the Merchant Seamen's Act, "every seaman who shall absolutely desert the ship to which he shall belong, shall forfeit to the owner or master thereof all his clothes and effects which he may leave on board, and all wages and emoluments to which he might otherwise be entitled, provided the circumstances attending such desertion be entered in the Log-book at the time, and certified by the signature of the master and mate or other credible witness." And the same section declares, that "an absence of a seaman from a ship for any time *within the space of twenty-four hours immediately preceding the sailing of the ship*, without permission from the master thereof, or *for any period, however short, under circumstances plainly showing that it was his intention not to return thereto*, shall be deemed an absolute desertion.\*

To enable the master to resist the payment of wages on the ground of desertion, he must be in a

\* 5 & 6 W. IV., c. 19, s. 9.

condition to show that he has done all that the law requires on his part ; namely, that he has entered or caused to be entered, the circumstances of the desertion in the Log-book at the time they occurred, and has certified them with his own signature, and also obtained the signature of the mate or some other credible witness thereto. And although it may not be deemed absolutely necessary upon the question as to the forfeiture of wages, yet it would be well for the master to produce a certificate of the functionaries or merchants resident at the place of desertion, if it took place abroad, certifying that the seaman had deserted or disappeared, according to the directions of the 42nd section of the Act. And this he is bound to obtain " if there be time to procure the same."\*

The fourth ground of forfeiture is "embezzlement and wilful or negligent loss or destruction of any part of the ship's cargo or stores." This forfeiture is expressly declared in every agreement between master and seamen according to the form required to be used by the Act of Parliament,† whereby it is stipulated, that "any embezzlement or wilful or negligent loss or destruction of any part of the ship's cargo or stores may be made good to the owner out of the wages (so far as they will extend)

\* Page 61.

† See Appendix, Nos. 1 & 2.

of the *seaman guilty of the same*." But it cannot be enforced against any seaman unless it be proved that *he individually* has been guilty of embezzlement, or that *he* wilfully or negligently occasioned the loss or destruction charged against him. This it may sometimes be difficult to prove; but, nevertheless, the law requires it. It was so declared before the passing of the late Act of Parliament, with respect to the proviso contained in the then existing form of ship's articles, in the following terms:—"This proviso is to be construed individually as affecting only the particular persons guilty of the embezzlement, and not the whole crew. Nor, as it seems, is any innocent person liable to contribute a portion of his wages to make good the loss occasioned by the misconduct of others."\* And the present form not only expressly confines the forfeiture to the seaman *guilty of the same*, but the Legislature has deprived owners and masters of the power of introducing any stipulation to extend the forfeiture to seamen *not guilty thereof*, by declaring that "no agreement made contrary to or inconsistent with the provisions of the Act shall be valid or binding on any seaman signing the same;"† and also by putting this direction within brackets in the form of agreement directed to be used—" [here may be inserted any other clauses which the parties

\* Abbott, 472.

† 5 &amp; 6 W. IV. c. 19, s. 5.

may think proper to be introduced into the agreement, *provided that the same be not contrary to or inconsistent with the provisions and spirit of this Act.*"] It would be obviously inconsistent therewith to insert a clause stipulating that all the seamen, whether innocent or guilty, should be liable to forfeiture in the event of the misconduct of others of the crew, inasmuch as in the spirit of the Act the guilty seaman only is to suffer; and it would be useless to insert it, because as no agreement can be valid if it omit any part of the form prescribed by the Act, any such clause to create a *general forfeiture of the wages of every seaman* in such case, must be followed by the words, "any embezzlement, &c., may be made good to the owner *out of the wages of the seaman guilty of the same:*" such clause, therefore, would not only be nugatory as being contrary to the Act of Parliament, but also as being irreconcilable with the latter part of the agreement itself.

Such a stipulation of general liability has been attempted to be enforced for the prevention of loss to the owner arising from "*smuggling or illicit transactions*" on board a ship, but the Court of Admiralty refused to give effect to it against any seaman not proved to have been a participator in such acts. The learned Judge said in deciding the case referred to, "I am clearly of opinion that

I could not pronounce for a forfeiture of wages on such clauses alone, unsupported by any proof of the fact against the individuals." And, as to these incidental additions to the ship's articles, he said, "they are not in all cases conclusive," but the Court of Admiralty "may, as a Court of Equity, consider how far such clauses are reasonable and consistent with justice, bearing in mind the general ignorance and imprudence of seamen, and their inability to understand the meaning of a long and multifarious instrument as the ship's articles are made by these additions."\*

The Court, in giving judgment, referred to a case before the Court of Common Pleas, in which that Court had occasion to consider the effect of an embezzlement not proved against any individual, and was of opinion that such a principle could not be pressed to the forfeiture of wages, from a mere clause in the articles making that fact a cause of forfeiture without proof of the fact against the individuals.†

The fifth ground of forfeiture is created by the statute before recited, which deprives mariners who neglect or refuse to assist their master in defending his ship against the attack of pirates, of all their

\* 2 Hag. A. R. 394.      † 1 B. & P. N. R. 347.



wages, together with such goods as they have in the ship.\*

Sixthly, "it seems that neglect of duty, disobedience of orders, habitual drunkenness, or any cause which will justify a master in discharging a seaman during the voyage, will also deprive the seaman of his wages."† This declaration of the law was written before the passing of the present Act, and it is left upon the same foundation as it then stood; namely, the general rules and maxims of maritime law. It will therefore be useful to collect a few cases, for the purpose of showing to what instances of misconduct the forfeiture of wages is considered to attach, upon general principles.

In the case of the "*Frederick*," the Court, in recapitulating the misconduct of the crew, said of one Brown, that he abused the captain in "gross terms, and words of defiance and challenge, to which the Court might, without impropriety, apply the term of mutiny. This man does not sue for his wages, and that is a strong admission that he was sufficiently apprised of his own misconduct and of its necessary consequences—the forfeiture of his wages." And afterwards, "upon the evidence,

\* Page 90.

† Abbott, 472.

I think it clearly appears that these men have behaved very ill. Their giving countenance to the mutineer, Brown,—their refusing to put out their lights, and to go below to bed, when so ordered by the captain,—their adhering to Brown in his determination to leave the ship (if this is to be considered as solely their own act), forms altogether a case of gross misconduct, inducing forfeiture of their wages.”\*

In the case of the “*Agincourt*,” the act of a mariner, of breaking out of confinement and throwing the instruments overboard, is called “a direct and gross act of mutiny.”†. And in that of the “*Susan*,” the Court “considered the conduct of a mariner—who had taken part with another that had been put in irons, and who demanded to be put also in irons, (which was accordingly done for insolent expressions and acts of a mutinous tendency,) and who had remained in irons for twelve days till the ship arrived at St. Helena, and did not then or at any time before retract or apologize for his misbehaviour, but was there left in custody, and came finally to England in another vessel—such as amounted to a forfeiture of the wages earned in the former part of the voyage from Calcutta.”‡

In the case of the “*New Phoenix*,” it was argued

\* 1 Hag. A. R. 211.    † Ib. 282.    ‡ 2 Hag. A. R. 229.

for the mariner, that "a casual act of intoxication while in port is not sufficient to deprive a mariner of his wages, though habitual drunkenness will." On the part of the captain it was urged, that "drunkenness enures to a total forfeiture of wages;" and Lord Stowell in giving judgment said, "The Court is not in the habit of paying much attention to minute descriptions of this infirmity, and I do think that the drunkenness is very nicely graduated in the present case. The general description given by the witnesses is that the man was hardly ever incapable of work; he is not therefore stained with being habitually a drunkard."\*

In the case of the "Lady Campbell," payment of wages was resisted on the ground of intoxication, and it was argued that the mariner being steward of the ship, was not entitled to the indulgence shown to the infirmities of a common man, which could not without injury to the service be extended to a man who is paid high wages and placed in a very responsible situation; but Lord Stowell said, "Nothing is proved that can fairly fix upon this person the imputation of habitual drunkenness; and when it is pressed that the steward has more responsibility in his station than a common sailor in the ship, it is not to be forgotten

\* 1 Hag. A. R. 198.

that in times of extreme danger and fatigue, he is expected to take some share in the ordinary functions of a mariner, and that if stronger obligations of duty arise from his situation of trust, he is more exposed to the dangers of undue indulgence from his ready access to the means of gratification." Payment of his wages was also resisted on the ground of a deficiency of table linen entrusted to his care; but there was no proof in what state the things were at the time the steward was appointed; it was not satisfactorily shown that a list of them had been delivered, and by whom it was examined and certified (if such delivery took place) did not appear. Lord Stowell said, with reference to this point, "I think the fatal deficiency of the charge upon this individual for the loss, whatever it may be, arises from the slovenly and negligent manner in which the transfer was made to him without any comparison of the things delivered with those enumerated in the list, if any such list then existed."\*

It has been before observed, that there are acts of a mutinous character, for which the proper punishment is forfeiture of wages; and it is sufficiently clear from the judicial opinions already quoted, that the maritime law attaches forfeiture of wages to acts of disobedience of a mutinous tendency.

\* 2 Hag. A. R. 5.

The general principles thus established, although not expressly embodied in the enacting clauses of the Act, so far from being opposed to it, are actually embraced in the form of agreement in the schedule prescribed for the signatures of the master and seamen, in which the latter "engage to conduct themselves in an *orderly, faithful, honest, careful, and sober manner*, and to be at all times *diligent in their respective duties and stations*, and to be *obedient to the lawful commands of the master in every thing* relating to the ship, and the materials, stores, and cargo thereof." And the master, "*in consideration of which services, to be duly, honestly, carefully, and faithfully performed*, promises to pay, *by way of compensation, or wages*," the amount agreed upon.

A seaman under articles providing for a forfeiture of his wages in case of breach of any of his engagements, (among which is that of serving faithfully during the voyage,) can recover nothing if he be left ashore in the course of it owing to his own fault in being absent at the time of the ship's sailing from any port or place at which she may have touched in the course of her voyage, though he had no intention of deserting;\* nor can he recover his wages if he be guilty of smuggling or any

\* *Sherman v. Bennett, M. & M.* 429.

other misconduct for which, by a special stipulation in the agreement, he has agreed to forfeit them, provided such stipulation be not inconsistent with the Act of Parliament, and it be confined to a guilty seaman, making him alone answerable for his own acts.

Where the second mate of a vessel was ordered, with three other seamen, to take the ship's boat and convey the master on board, who had gone on shore at the Mauritius, and on their getting on shore refused to return with him, but remained there all night, and he was obliged to get back to his ship in another boat and redeem his own on the following morning, when the mate was taken before a magistrate and committed to prison, it was held that this was such an act of disobedience as to warrant the master to detain the mate's property on board the vessel by way of forfeiture.\*

But if a seaman's claim for wages be resisted on the ground that he would not do his work, it would be a good answer to show that the refusal to work was caused by the misconduct of the master.†

Seventhly. The last stipulation in the agree-

\* *Weatherpen v. Laidler*. 8 Moore, 37.

† *Train v. Bennett*. 3 C. & P. 3 M. & M. 82.

ment between the master and seamen subjects any one entering himself as qualified for a duty to which he shall prove to be not competent, to a reduction of the rate of wages agreed for, in proportion to his incompetency. This is not regarded as a forfeiture, and therefore the Act of Parliament has not made it imperatively necessary to enter the facts and circumstances tending to show the seaman's incompetency in the Log-book; but, nevertheless, it will be more satisfactory to do so, as it will materially assist the master in proving such incompetency, if the facts be correctly stated in the Log-book. They must be strictly proved in order to justify an abatement of the wages agreed to be given, for the law will not sanction an abatement therefrom upon insufficient grounds, nor allow a master "at his option to displace any one improperly from the situation for which he is hired."\*

Eighthly. If a seaman shall have unlawfully neglected or refused to join his ship, at any time after having signed the agreement for the voyage, or if he refuse to proceed to sea in her or absent himself without leave, and if the master shall have incurred costs in his apprehension, which a Justice shall award to be paid and abated from the wages of the seaman in the event of his being sent on

\* 1 Hag. A. R. 198.

board his ship instead of being committed, such costs may be abated, provided they do not exceed the sum of forty shillings, and that the master be able to prove the award of the Justice if that be a disputed question.\*

Ninthly, as to deductions from the wages of seamen for the expense of medical advice and attendance and medicines, in case of sickness, it is difficult to lay down any clear and undoubted rule. "By the ancient marine ordinances, if a mariner falls sick during a voyage, or is hurt in the performance of his duty, he is to be cured at the expense of the ship, but not if he receives an injury in the pursuit of his own private concerns."† The Act of Parliament is in perfect agreement therewith as to one of the cases, by declaring, that "in case any of the seamen shall receive any hurt or injury in the service of the ship, the expense of providing the necessary surgical and medical advice, &c., shall be defrayed by the owner and master, or one of them."‡ But with respect to "natural sickness happening to a seaman in the course of the voyage,"|| the Act does not agree with the marine ordinances. It throws the expense upon the ship, not absolutely, but conditionally. It

\* Page 45.

† Abbott, 146.

‡ 5 &amp; 6 W. IV., c. 19, s. 18.     || Abbott, 442.



enacts, that in case default shall be made in providing and keeping supplied such medicines as aforesaid, the expense of surgical and medical advice and attendance and medicines shall be borne and defrayed by the master and owner of the ship, or one of them, without any deduction whatever on that account from the seaman's wages; and thereby raises the inference that if no default be made in providing medicines on board, such expense may be deducted from the seaman's wages.\* This inference is strengthened by the common law rule that a master is not bound to provide a domestic or other servant with medical attendance and medicines during sickness. But there is this difference in the position of a servant—he can obtain medicines and medical advice which the seaman while at sea cannot procure, and therefore the

\* It has been suggested (page 35) that a special clause should be inserted in the agreement to prevent men in a diseased state shipping themselves as able seamen, and it will be observed that the authorities, when speaking of "natural sickness," use these terms of limitation,—“happening to a seaman in the course of the voyage.” In construing contracts between master and seamen, the Courts will in general act upon equitable principles rather than strict rules of law, and it should therefore seem that incipient disease at the commencement of the voyage manifesting itself in the course of it and rendering the seaman incapable of duty, will not subject the master or owners to any charge beyond that of medicines, which they are bound to supply from the medicine-chest to all persons on board, under whatever circumstances.

law requires the master to have and keep a proper supply of medicines on board. No deduction can be made from the seaman's wages for any medicines supplied to him on board the ship, but it seems doubtful whether the Legislature contemplated that any additional expense, such as that of medical advice in a foreign port, or of sending the seaman to be cured on shore, should fall upon the ship, *except he receive hurt or injury in the service of the ship*. As to the third case, where a seaman "receives an injury in the pursuit of his own private concerns," if masters take care to comply with the law in keeping on board a proper supply of medicines, there can be no doubt the expense of curing him may be deducted from his wages. He cannot, however, be charged with the expense of medicines supplied to him on board the ship, for the law has thrown upon masters and owners the duty of keeping on board a supply of medicines suitable to accidents and diseases arising on sea voyages, for the benefit of all persons on board, without exception as to the class of persons or the cause of disease, and *if this duty be neglected*, it seems to place a seaman suffering either under natural sickness, or an injury received in the pursuit of his own private concerns, in the same position with one who is hurt in the performance of his duty, and to cast the whole expense upon the ship.

The tenth and last abatement from wages is made under the Act for the relief of sick, maimed, and disabled seamen, and the widows and children of such as shall be killed, slain, or drowned in the Merchant Service.

By the 5th section of that Act, every master of any merchant vessel belonging or to belong to any subject of His Majesty, and every owner being a British subject, navigating or working his own vessel, whether the said vessel shall be employed on the high sea or coasts of Great Britain or Ireland, or in any port, bay, or creek of the same, shall pay two shillings per month and proportionably for a lesser time : and by the 6th section, every seaman or other person whatsoever, who shall serve or be employed by any person or persons whatsoever in any such vessel, and every pilot employed on board any such vessel, shall pay one shilling per month and proportionably for a lesser time, during the time he shall belong to such vessel ; which by the 7th and 13th sections, the master or owner is required to deduct and detain out of the wages, shares, or other profits payable or accruing to such seaman or other person employed on board, and to pay, together with the amount due from himself, to such officer as shall be appointed to receive the same under the said Act, at whatever port in the United Kingdom his ship or vessel shall report or

discharge her cargo, and before she shall be cleared inwards by the officer of customs. Provided always, that the Act shall not extend to any person or persons employed in any boat upon any of the coasts of great Britain or Ireland, or the Islands of Guernsey, Jersey, Alderney, Sark, and Man, in taking fish, nor to any person or persons employed in boats or vessels that trade only from place to place within any river of Great Britain or Ireland.\*

Having gone through the forfeitures and abatements to which seamen are subject, we must now turn to the section which regulates the amount of one month's pay, or two days' pay, in "cases where the seaman shall have contracted for wages by the voyage or by the run, and not by the month, or other stated period of time;" and in such cases the Act declares that the forfeitures to be incurred by seamen shall be ascertained "in manner following; (that is to say), if the whole time spent in the voyage shall exceed one calendar month, the forfeiture of one month's pay shall be accounted and taken to be a forfeiture of a sum of money bearing the same proportion to the whole wages as a calendar month shall bear to the whole time spent in the voyage; and in like manner a forfeiture of two

\* 4 & 5 W. IV., c. 52, ss. 5 & 6.

days' pay or less shall be accounted and taken to be a forfeiture of a sum bearing the same proportion to the whole wages as the same period of time shall bear to the whole time spent in the voyage; and if the whole time spent in the voyage shall not exceed one calendar month the forfeiture of one month's pay shall be accounted and taken to be a forfeitur of the whole wages contracted for; and if such time shall not exceed two days, the forfeiture of two days' pay shall be accounted and taken to be a forfeiture of the whole wages contracted for."\*

Sufficient information has thus been collected to enable masters generally to form a right estimate and conclusion with regard to the amount of wages payable to seamen, and to make out their several accounts accordingly. Having ascertained the balance due, a legal tender thereof should be made; that is to say, the money should be produced and offered in payment, and if it should be refused, masters will be exonerated from the costs of proceedings resorted to by the seamen on proof of such tender, if the sum tendered shall appear sufficient.

The proceedings to be adopted by seamen in

\* 5 & 6 W. IV., c. 19, s. 8.

cases of dispute form the next subject of consideration. The 15th section of the Act establishes a summary power of deciding such cases, where the wages due and payable do not exceed twenty pounds, in which cases it enacts, that "it shall be lawful for any Justice of the Peace in any part of His Majesty's dominions, residing near to the place where the ship shall have ended her voyage, cleared at the Custom-house, or discharged her cargo, or near to the place where the master or owner upon whom respectively the claim is made, shall be or reside, upon complaint on oath to be made to such Justice, by any such seaman or on his behalf, to summon such master or owner to appear before him to answer such complaint, and upon the appearance of such master or owner, or in default thereof, on due proof of his having been so summoned, such Justice is empowered to examine upon the oath of the parties and their respective witnesses (if there be any), touching the complaint and the amount of wages due, and to make such order for payment thereof as shall to such Justice appear reasonable and just; and in case such order shall not be obeyed within two days next after the making thereof, it shall be lawful for such Justice to issue his warrant to levy the amount of the wages awarded to be due, by distress and sale of the goods and chattels of the party on whom such order for payment shall be made, rendering to such party the

overplus, (if any shall remain of the produce of the sale,) after deducting thereout all the charges and expenses incurred by the seaman in the making and hearing of the complaint, as well as those incurred by the distress and levy, and in the enforcement of the Justice's order; and in case sufficient distress cannot be found, it shall be lawful for the said Justice to cause the amount of the said wages and expenses to be levied on the ship in respect of the service on board which the wages are claimed, or the tackle and apparel thereof; and if such ship shall not be within the jurisdiction of such Justice, then he is empowered to cause the party upon whom the order for payment shall be made to be apprehended and committed to the common gaol of the county, there to remain, without bail, until payment shall be made of the amount of the wages so awarded, and of all costs and expenses attending the recovery thereof; and the award and decision of such Justice as aforesaid shall be final and conclusive, as well on every such seaman as on the owner and master of the ship."\*

The jurisdiction of the Court of Admiralty is not taken away, but expressly reserved by the 5th section of the Act. Seamen are, however, prevented from unnecessarily instituting suits in that

\* 5 & 6 W. IV., c. 19, s. 15.

Court by the 16th section, which enacts, that "if any suit for the recovery of a seaman's wages shall be instituted against the ship, or the master or owner thereof, either in the High Court of Admiralty, or in any Vice-Admiralty Court, or against the master or owner in any Court of Record in His Majesty's dominions, and it shall appear to the Judge in the course of such suit, that the plaintiff might have had as effectual a remedy for the recovery of his wages by complaint to a Justice of the Peace, then and in every such case it shall be lawful for such Judge and he is required to certify to that effect, and thereupon no costs of suit shall be awarded to the plaintiff."\*

In proceedings for the recovery of wages it is not necessary that the agreement should be produced to sustain a claim on the part of a seaman, for it is enacted, that no obligation shall lie upon the seaman to produce the same, nor shall any seaman fail in any suit or proceeding for the recovery of his wages for want of the production of any such agreement, or of any deposited copy thereof as aforesaid, or for the want of any notice to produce the same, any law or usage to the contrary notwithstanding.†

The summary jurisdiction given to a magistrate

\* 5 & 6 W. IV., c. 19, s. 16.    † S. 5.



in such cases has been found highly beneficial to owners and masters of ships, as well as to seamen ; it affords a cheap and expeditious mode of adjusting the amount of wages due, not exceeding twenty pounds, and the expensive and dilatory process of the Admiralty Court is now but seldom resorted to in cases where the wages sought to be recovered do not exceed that sum.

The law has attached certain specific forfeitures to particular breaches of duty, and when the facts upon which such forfeitures are sought to be enforced, are clearly established by evidence and supported by the proper entries in the Log-book, there is no discretion to be exercised by the magistrate. The law is positive, and he must give effect to it by allowing such specific forfeitures to be deducted from the amount of wages claimed, or in the case of absolute desertion, by declining to make any order whatever. If a question of forfeiture arise upon the general principles of maritime law, on which a magistrate cannot come to a satisfactory conclusion, he may decline the jurisdiction, and leave the question to the decision of a superior Court.\* If

\* Upon an application to the Court of Admiralty, in a case where a magistrate had refused to adjudicate on such a question, Sir J. Nicholl intimated that the object of the Legislature in giving the summary jurisdiction to magistrates was to facilitate the adjustment of disputes as to the amount of

a question of this kind should be decided by a magistrate erroneously in favour of the seaman, injustice would be done to the master or owner, for which he could have no easy remedy, because "the award and decision of such Justice" is declared to "be final and conclusive,"\* whereas, if he decline making an order, no injustice would be done to either party—the seaman would be exempt from the operation of the 16th section of the Act,† and having the means of showing that he could not have an effectual remedy for the recovery of his wages by complaint to a Justice of the Peace, he might commence a suit in the Admiralty Court without being deprived of his costs in the event of a successful issue.

A seaman whose conduct has been such as to raise a question of forfeiture upon the general principles of maritime law, has no right to complain of being left to seek his wages by the ordinary course of law. From him the facility of summary jurisdiction for the recovery of wages may not only *lawfully*, but prudently, be withheld.

As to other proceedings to obtain payment of wages, but not to pronounce their forfeiture, and that the question whether there had been an abandonment or justifiable quitting, was a question for a higher tribunal.

\* 5 & 6 W. IV., c. 19, s. 15.

† Page 145.

wages, it will not in a work of this description be necessary to go beyond a concise statement of points which should be generally known.

“The seamen have in ordinary cases a threefold remedy—against the ship, the owners, and the master: the master, whether appointed to that office at the commencement, or succeeding to it in the course of the voyage, can only sue the owners personally in a Court of Common Law; but as he generally receives the freight and earnings of the ship and may pay himself out of the money in his hands, he has not often occasion for the aid of a Court of Justice to obtain his right. The suit of the seamen in the Court of Admiralty is an indulgence granted to them on account of the convenience and advantage of proceeding in a Court in which all may join in one suit, and payment may be obtained out of the value of the ship. If the hiring be on the usual terms,” and made otherwise than by deed, “the seamen, or any one or more of them, and every officer, except the master, may sue in the Court of Admiralty, and may, by the process of that Court, arrest the ship as a security for their demand, or cite the master or owners personally to answer them. And the seamen may sue there not only for the wages earned in the course of a voyage, but for those earned in rigging and fitting out a ship for a voyage on

which they have engaged to proceed, if the owners do not afterwards think proper to send the ship on the intended voyage. And it seems also that they may sue there for the wages contracted to be paid to them for navigating a ship from one port of this country to another. And if a suit be there instituted, that Court can properly decide whether a place at which a ship may have arrived be a port of delivery so as to entitle them to wages.”\*

The jurisdiction of the Court of Admiralty is not affected by the form of agreement prescribed by the Act, which is not a deed, but only a contract in writing; and it is enacted, “that no seaman by entering into or signing such agreement, shall forfeit his lien upon the ship, nor be deprived of any remedy for the recovery of his wages which seamen are lawfully entitled to against either the ship, the master, or the owners thereof.”†

“In proceeding against the ship in specie, if the value thereof be insufficient to discharge all the claims upon it, the seaman’s claim for his wages is preferred before all other charges.

“In the Courts of Common Law, the seamen may sue either the master, as the person immediately

\* Abbott, 475.

† 5 & 6 W. IV., c. 19, s. 5.

contracting with them and answerable to them, or the owners, as the persons virtually contracting with them through the agency of the master, and answerable for the performance of his engagement. And all suits brought in the Court of Admiralty, and actions in the Courts of Common Law for seamen's wages must be commenced within six years next after the cause of such suit or action shall accrue."\*

An important clause for the protection of seamen from fraud has been introduced into the Act, which has put an end to fraudulent bills of sale obtained in a state of drunkenness or under coercion. Indeed, it has done more—it has extinguished what was formerly a prolific branch of forgery. The 12th section is the clause alluded to, which declares, that every payment of wages to a seaman (personally) "shall be valid and effectual in law, notwithstanding any bill of sale or assignment which may have been made by any such seaman of such wages, or of any attachment or incumbrance thereon; and that no assignment or sale of wages made prior to the earning thereof, nor any power of attorney expressed to be irrevocable for the receipt of any such wages, shall be valid or binding upon the party making the same."†

\* Abbott, 484, 485.      † 5 & 6 W. IV., c. 19, s. 12.

Having explained the proceedings to be adopted by seamen for the recovery of wages, it is time to notice the mode of proceeding against deserters who leave their ships in parts beyond the seas, and thereby place masters under the necessity of hiring substitutes at a higher rate of wages than that stipulated to be paid to the deserters. The 9th section enacts, that the owner or master shall be entitled to recover any excess of wages which shall have been paid to a substitute beyond the amount which would have been payable to a deserter who shall have deserted in parts beyond the seas, in case he had duly performed his service according to his agreement, by proceeding before a magistrate against the deserter in the same way as a seaman proceeds for the recovery of wages.\*

Compared with the pre-existing law on this subject, this appears a very mild, and often it will be found an ineffectual proceeding, but no course established by law to check the evil of desertion in parts beyond the seas should be suffered to remain wholly inoperative, as this has hitherto been. The clause may be enforced in some cases if there be that degree of co-operation between owners and masters of different vessels which is necessary. If a seaman desert, for instance, at Que-

\* 5 & 6 W. IV., c. 19, s. 9. Page 143.

bec, it will be generally known what other ships may have been there about the same time; and it not unfrequently happens that the ship from which a seaman has deserted and also the ship in which he has afterwards hired himself abroad at perhaps double wages, return to the same port of delivery about the same time. In that event the owner or master of the ship from which the seaman deserted should forthwith take out a summons against him, and pray to have it made returnable before the wages earned on the homeward voyage would become payable, so that the magistrate's adjudication might be enforced while the seaman has the means of paying the sum ordered, or while he is on shore and may be committed to prison in default. And although the wages earned on the homeward voyage are not now, as they were formerly, liable to forfeiture, yet the owner or master of the ship in which a deserter comes home may fairly delay payment of the wages as long as the law will permit, and thereby render every possible facility to the owner or master of the ship from which he deserted, in instituting and following up the proceedings against him.

It is true that the mode of proceeding is not sufficiently prompt as against a seaman, for he has two days, after the magistrate's order, to consider whether he will obey it, and then a warrant must issue.

to levy the sum ordered *by distress and sale of his goods and chattels* ;\* but “if *sufficient distress* cannot be found,” a warrant of commitment issues, and may be put in execution whenever he can be found; and if taken under that warrant to gaol, the punishment will be severe enough if he cannot find money, for he must there remain without any limitation as to period of time, “without bail, until payment shall be made of the amount awarded, and of all costs and expenses attending the recovery thereof.”†

As to the wages of deceased seamen, the statute 5 W. IV., c. 52, s. 30, enacts, “that all and every sum and sums of money which shall be due for wages to any seaman or other person hired or engaged on board any British merchant ship in any port or ports in Great Britain or Ireland, who shall have died *on board* during the voyage, shall, within three months after the arrival of such merchant ship, in any such port, be paid to the trustees of the said port appointed under the Act, or to the receiver or collector or other authorized agent of the said President and Governors of the Corporation for

\* 5 & 6 W. IV., c. 19, s. 15.

† Power should be given to commit the seaman forthwith, and without issuing a distress warrant, in this case, if he neglect to pay the sum ordered; but the period of imprisonment ought to have a reasonable limitation.



the Relief of Merchant Seamen, where there are no such trustees, to and for the use of the executors or administrators of the seaman or other person so dying.\* And in case "any seaman so dying shall leave on board the ship to which he shall belong any monies, clothes, or other effects, and the same shall not be claimed within one month after the ship's return to the United Kingdom by the executor or administrator of the deceased, then the master is required to deposit the same, or the proceeds arising therefrom with the President and Governors aforesaid, to be by them disposed of in the same manner as is provided with respect to the wages of deceased seamen."†

The said trustees, and also the said President and Governors, will receive and attend to the application of any person who may be legally entitled to demand the said wages, monies, clothes, or other effects of any deceased seaman; but if the same shall not be lawfully demanded of the said trustees, or of the receiver, collector, or other authorized agent of the said President and Governors at the *Port of London*, by any legal representative, or widow, or issue, or other person authorized by

\* 4 & 5 W. IV., c. 52, s. 30.

† 5 & 6 W. IV., c. 19, s. 25.

the Act, as the case may be, within the term of two years after the first payment thereof to any collector or agent of the said President and Governors, the same are declared to be forfeited and directed to be paid to the use of the said President and Governors, or to the trustees of the port, if any to which such ship belongs.\*

If any master or commander of any such British merchant ship shall neglect or refuse to pay over or tender to the said trustees, or the receiver or collector at the port aforesaid, all and every such sum and sums of money so due for wages to any seaman who shall have died on board, within the time limited (three months after the arrival of the ship), he shall forfeit and pay for every such offence double the amount of the wages so due.\*

If a seaman be hurt in the course of a voyage, he is required to produce, or cause to be produced, a certificate to the said President and Governors, or their assistants and committees, of the "hurt or damage he hath received, from the master, mate, boatswain, and surgeon, or so many of them as were in the ship or vessel to which such seaman belonged at the time of his receiving such hurt or damage, or of the master and two of the seamen

\* 4 & 5 W. IV., c. 62, ss. 30 & 31.      † S. 30.

if there be no other officer, or in case the master shall die, or be killed, or drowned, then of the person who shall take upon him the care of the ship or vessel, and two of the seamen on board the same, under their hands and seals, thereby signifying how and in what manner such seaman received such hurt or damage, whether in fighting, defending, working, loading, or unloading the said ship or vessel, where and when he entered, and how long he had served on board the same; and the parties so signing and sealing such certificate are required by the statute to make oath of the truth of the contents thereof before some one of His Majesty's Justices of the Peace, if given in Great Britain or Ireland, or other His Majesty's dominions, or the chief Officer of the Customs of the port or place where there is no Justice of the Peace, or before the British Consul or Resident in any foreign country where such certificate is executed, (who are respectively authorized and required to administer the same without fee or reward)." In case of sickness, whereby a seaman shall be rendered incapable of service, the Act requires a certificate to be "signed, sealed, and authenticated, in like manner, signifying that he was healthy when he entered on board such ship or vessel, and that such sickness was contracted on board the same, or on shore, in doing his duty in the service of the ship, and not otherwise, and expressing the time

and place he entered on board such ship or vessel, and how long he had served therein." In the case of any seaman "being killed, slain, or drowned, in the merchant service," the widow, child, or children, must either produce, or obtain some person on her or their behalf, to produce a certificate, "signed, sealed, and authenticated in like manner, signifying how and in what manner such seaman lost his life in the service of the said ship or vessel, the time and place he entered on board, and how long he had served therein;" and must also "produce, or cause to be produced, a certificate under the hands and seals of the minister and churchwardens and overseers of the poor of the parish, township, or place, or any two of them, or under the hands and seals of the minister and overseers of the poor of the parish, township, or place, or any two of them where there are no churchwardens, or if in Scotland, by the minister and elders, or if in Ireland, by a Justice of the Peace for the parish, township, or place where such widow, child, or children shall at the time reside; and if such widow, child, or children are some of the people called Quakers, then by any two reputable persons of that persuasion of the parish, township, or place, where such widow, child, or children have a legal settlement, or do inhabit and reside, to be attested by two or more credible witnesses, that such widow was the law-

ful wife and real widow, and that such child or children was or were the lawful child or children of such deceased seaman as aforesaid, and that such child or children is or are under the age of fourteen years, or if of that age or upwards, not capable of getting a livelihood by reason of lameness, blindness, or other infirmities, and is or are proper objects of charity.”\*

The 10th section of the stat. 4 & 5 W. IV., c. 52, requiring masters of ships to keep a book for the entry of all forfeitures incurred by seamen, and to deliver such book or a copy thereof to the officer of the said President and Governors in London, or the trustees of the Merchant Seamen's fund at the out-ports, seems not necessary to be now complied with, since the subsequent Act 5 & 6 W. IV., c. 19, has repealed all the laws imposing such forfeitures which gave a portion of them to the use of Greenwich Hospital, or “to the use and benefit of old and disabled seamen and their families, to be distributed at the discretion of the persons having the direction of the Merchant Seamen's Fund;” and instead thereof, has appropriated all forfeitures incurred by seamen for misconduct, to the use of the owners, who are the injured parties; and all penalties (saving a

\* 4 & 5 W. IV. c. 52, s. 2.

moiety to the informer) to Greenwich Hospital and the Merchant Seamen's Hospital at the port to which the ship shall belong, if there be one; but if there be none, then to Greenwich Hospital only; so that there are now no forfeitures or penalties whatever to be carried to the account of the Merchant Seamen's Fund.

But those parts of the 4 & 5 W. IV., c. 52, which establish regulations for the due collection of the monthly duty payable to the Merchant Seamen's Fund, must be strictly observed. It has been stated that the same should be paid before the vessel be cleared inwards, and the 13th section prohibits Officers of the Customs from clearing any merchant ship inwards, and from granting any warrant, or giving or granting out any cockets, transire, returns, or discharges unto or for any ship or vessel whatsoever, and it also prohibits them from permitting or suffering any such ship or vessel to go out of port, until the master, commander, or owners of every such ship or vessel shall and do produce and show forth unto such officers an acquittance or certificate signed by the receiver or collector of the said duties, whereby it shall appear that such master, commander, or owners, have duly and fully paid the said duties, and are not more than three months in arrear for the same, or that they are exempt from the pay-

ment of the said duties. And every such master, commander, or owner, who shall refuse or neglect to pay the said duty in manner and within the time limited and appointed, shall forfeit the sum of ten pounds.\*

And to prevent unnecessary delays in clearing ships and vessels, by section 14 it is enacted, that in case the master, commander, or owner of any vessel liable to the payment of the duties aforesaid shall not produce such acquittance or certificate of payment, or of such an agreement as by the 13th section may be entered into for the payment of such duties by half-yearly payments at the port to which such ship or vessel belongs, to the Tide Surveyor when he shall come on board to clear such ship or vessel, the Tide Waiters on board such ship or vessel shall be continued until such acquittance or certificate is produced, at the expense of such master, commander, or owner, and not at the expense of the Crown.†

The 5 & 6 W. IV., c. 19, authorizes the establishment in the Port of London of an office, called "The General Register Office of Merchant Seamen," consisting of a Registrar and such assistants and clerks as may be regulated by the Lords

\* 4 & 5 W. IV. c. 52, s. 13.

† 8. 14.

Commissioners of the Admiralty, which office is to be kept at the Custom-house, and whereat daily attendance shall be given during the usual hours of business there.\* And it is enacted, that "it shall be lawful for the said Registrar and his assistants, and also for the respective Collectors or other chief officers of the Customs at the several ports of the United Kingdom and of the British possessions abroad, to demand from the master of every ship hereby required to enter into an agreement with his crew, the production of the Muster-roll of the ship, and also of such agreement, with liberty to take a copy of either or both, and to muster the crew and apprentices of such ship, *for the purpose of ascertaining whether the provisions of the Act and of the laws relating to navigation have been complied with*; and if any such master, on such demand being made, shall refuse or neglect to produce such Muster-roll or agreement, or shall refuse to allow a copy of either document to be taken, or shall refuse to permit or shall prevent his crew and apprentices from being so mustered, he shall for every such neglect, refusal, or offence forfeit and pay the sum of fifty pounds."†

Section 52, in order to avoid doubts in the con-

\* 5 & 6 W. IV., c. 19, s. 19.

† S. 51..



struction of the Act, provides, "that every person having the charge or command of any ship belonging to any subject of the United Kingdom, shall be deemed and taken to be the master of the ship; that every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same, shall be deemed and taken to be a seaman; that the term 'ship,' shall be taken and understood to comprehend every description of vessel navigating on the sea; that the term 'owner,' as applied to a ship, shall be understood to comprehend all the several persons, if more than one, to whom the ship shall belong; and that all steam and other vessels employed in carrying passengers or goods, shall be deemed trading ships within the meaning and for the purposes of the Act."\*

Section 53 enacts, "that all penalties imposed by the Act not exceeding twenty pounds shall be recoverable at the suit of any person by information and summary proceeding before any one Justice of the Peace in any part of His Majesty's Dominions residing near to the place where the offence shall be committed, or where the offender shall be," who shall have full power to levy the amount of such penalty and costs by distress of the offender's goods, or by commitment of the offender for non-payment

\* 5 & 6 W. IV., c. 10, s. 52.

of the amount, and that all penalties exceeding twenty pounds may be recovered with costs of suit "in any of His Majesty's Courts of Record at Westminster, Edinburgh, or Dublin, or in the colonies, at the suit of His Majesty's Attorney-General or other chief Law Officer of the Crown, in any part of His Majesty's dominions other than in Scotland; and if in Scotland, at the suit of the Lord Advocate;" one moiety whereof is directed to be paid to the informer, and the residue divided between Greenwich Hospital and the Merchant Seamen's Hospital or Institution at the port to which the ship shall belong, and if there shall be none such at the said port, then the whole of the said residue is to be paid to Greenwich Hospital. Power is given to mitigate penalties to one-half the original amount, and proceedings for the recovery thereof must be commenced within two years next after the commission of the offence, if committed at or beyond the Cape of Good Hope or Cape Horn, or within one year if committed on the European side of those limits, or within six calendar months after the return of the offender or the complaining party to the United Kingdom.\*

Section 54 enacts, that the Act shall not extend or apply to any ship registered in or belonging to

\* 5 & 6 W. IV., c. 19, s. 53.

any British colony having a Legislative Assembly,  
or to the crew of any such ship while such ship  
shall be within the precincts of such colony.\*

\* 5 & 6 W. IV. c. 19, s. 54.

## CHAPTER IV.

CONTAINING ALL THE CLAUSES OF THE ACT OF PARLIAMENT (5 & 6 W. IV., c. 19) WHICH RELATE TO APPRENTICES.

And whereas the giving due encouragement to such of the youth of the United Kingdom as shall voluntarily betake themselves to the sea service, and obliging others to do so who by reason of their own or their parents poverty are destitute of the means of obtaining subsistence and employment, will not only greatly tend to the increase of able and experienced seamen, as well for the service of the Royal Navy as for carrying on the commerce of His Majesty's subjects, but will likewise provide them with employment, and thus materially diminish the burthen of expense cast upon parishes by their maintenance; be it therefore enacted, that it shall be lawful for the overseers of the poor or other persons having the authority of overseers of the poor of any parish, township, or place in the United Kingdom, or in whom the duty of overseers or guardians of the poor shall or may be vested, and they are hereby empowered, to

bind by indenture and put out any boy having attained the age of thirteen years, and of sufficient health and strength, who or whose parent or parents is or are chargeable to or maintained by any such parish or township, or who shall beg for alms therein, with his consent but not otherwise, an apprentice in the sea service to any of His Majesty's subjects being the master or owner of any ship registered in any port of the United Kingdom, for so long time and until such boys shall respectively attain the age of twenty-one years, which binding shall be as effectual in the law to all intents and purposes as if such boy had been bound by virtue of any statute now in force respecting the binding of parish apprentices, or as if such boy were of full age and had bound himself an apprentice, and notwithstanding the residence of the master or owner to whom he may be bound shall be more than forty miles distant from such parish or place: Provided always, that every such binding shall be made in the presence of two Justices of the Peace acting for the county, riding, division, city, borough, or place within which such parish or township shall be situate, which Justices shall execute the indenture in testimony of their having been satisfied that such boy hath attained the age and is of sufficient health and strength as required by this Act; and to the end that the period when the service under such indenture shall expire may the more certainly appear, the age of every

such boy shall be inserted in his indenture, the same being truly taken from a copy of the entry of his baptism in the Register-book of the parish in which he was born (where the same can be obtained), which copy shall be given and attested by the officiating minister of such parish without fee or reward; and in cases where no such entry of baptism can be found, the Justices aforesaid shall inform themselves as fully as they can of such boy's age, and from such information shall insert the same in his said indenture, and the age of every such boy so inserted therein shall (in relation to the continuance of his service) be taken to be his true age without any further proof thereof.—Section 26.

And be it further enacted, that it shall be lawful for any master or person to whom any poor parish apprentice shall have been or shall be hereafter bound to a service on shore according to the statutes already in force relating to such apprentices, or for the executors or administrators, or, there being none such, for the widow of any such deceased master, with the concurrence of two or more Justices of the Peace residing in or near to the place where such poor boy shall have been bound apprentice, to assign and turn over such poor boy, with his consent but not otherwise, apprentice to any master or owner of any ship not having her complement of apprentices as herein-

after required, to be employed by such master or owner in the sea service during the period then remaining unexpired of his apprenticeship.—  
Sect. 27.

And be it further enacted, that in the event of the death of the master of any such poor or parish apprentice to the sea service, it shall be lawful for the widow or the executor or administrator of such deceased master to assign the indenture of any such apprentice for the residue of the term then unexpired therein to any master or owner of any such ship not having the complement of apprentices as herein-after required; all which assignments, if executed within the limits of the Port of London, shall be attested by the said Registrar or one of his assistants or clerks, and if at any other port shall be attested by the Collector or Comptroller of the Customs of such port.—  
Sect. 28.

And be it further enacted, that such overseers or other persons as aforesaid shall cause the indentures of apprenticeship to be prepared and transmitted in duplicate, if the master or owner of the ship to whom such apprentice is to be bound shall be or reside within the limits of the Port of London, to the said Registrar, and if at any other port the Collector or Comptroller of the Customs

at such port ; and the said overseers or other persons as aforesaid shall cause each such poor boy to be conducted and conveyed to such port or place by the constable and at the expense of the parish or township sending him thither, and shall also, upon the execution by the master of the counterpart of the indentures, cause to be paid down to the master the sum of five pounds, to be expended in providing such boy with necessary sea clothing and bedding ; which sum, as well as the expenses to be incurred in the conveyance of the boy as aforesaid, shall, when paid, be allowed to them in their accounts of monies expended in relation to the poor. —Sect. 29.

And be it further enacted, that the counterparts of all such indentures shall, if the master shall be or reside within the limits of the Port of London, be executed in the presence of and attested by the said Registrar or one of his assistants or clerks, and if at any other port by the Collector or Comptroller of the Customs at such port, and also in both cases by the constable or other officer who shall convey such apprentices thither, and such indentures shall bear date respectively on the days on which they are executed ; and the constable on his return shall deliver such counterparts to the overseers or other persons as aforesaid, to be by them registered and preserved.—Sect. 30.



And be it further enacted, that the master of every ship belonging to any subject of the United Kingdom, and of the burthen of eighty tons and upwards, shall have on board thereof, at the time of clearing out from any port of the United Kingdom, one apprentice or more, in the following proportions to the number of tons of his ship's admeasurement, according to the certificate of registry ; that is to say, every ship of eighty tons and under two hundred tons shall have one apprentice at the least, every ship of two hundred tons and under four hundred tons shall have two apprentices at the least, every ship of four hundred tons and under five hundred tons shall have three apprentices at the least, every ship of five hundred tons and under seven hundred tons shall have four apprentices at the least, and every ship of seven hundred tons and upwards shall have five apprentices at the least, all of whom at the period of their being bound respectively shall have been under seventeen years of age, and shall have been duly bound for the term of four years at the least ; and if any such master shall neglect to have on board his ship the number of apprentices as hereby required, he shall for every such offence forfeit and pay the sum of ten pounds in respect of each apprentice so deficient.—Sect. 31.

And be it further enacted, that no apprentice

bound or assigned pursuant to this Act, nor any master or owner in respect of any such apprentice, shall be liable to the payment of any contribution towards the support of any hospital or institution.—Sect. 32.

And be it further enacted, that the said Registrar in *London* and the Collector and Comptroller of the Customs at each other port shall, in a book to be kept for that purpose, cause to be entered from time to time all such indentures and assignments of parish apprentices as aforesaid, specifying therein the dates thereof, the names and ages of the apprentices, the parishes or places from whence sent, the names and residences of the masters to whom bound or assigned, and the names, ports, and burthen of the respective ships to which such masters belong, and shall make and subscribe on each indenture or assignment respectively an indorsement purporting that the same hath been duly registered pursuant to this Act; and every such Collector or Comptroller shall also at the end of each quarter of the year transmit a list of the indentures and assignments so registered by him within the preceding quarter, containing all the particulars aforesaid, to the said Registrar, for the purposes of this Act.—Sect. 33.

And be it further enacted, that in every case

of a person voluntarily binding himself apprentice to the sea service, the indentures to be executed on such occasions shall be registered in a book to be kept for that purpose, by the said Registrar in *London* and by the Collector and Comptroller of the Customs at each other port at which the indenture shall be executed, in which book shall be expressed the dates of the several indentures, the names and ages of the apprentices, the names and residence of their masters, and (if known) the names, port, and burthen of the several ships on board which they are respectively to serve; and such Registrar and Collector or Comptroller respectively shall indorse and subscribe upon each indenture a certificate purporting that the same hath been duly registered pursuant to this Act, and the said Collector and Comptroller shall also at the end of each quarter of the year transmit a list of the indentures so registered by them within the preceding quarter, containing all the particulars aforesaid, to the said Registrar, for the purposes of this Act; and that it shall be lawful for the master, or in case of his death his executor or administrator, with the consent of the apprentice if of the age of seventeen years or upwards, and if under that age with the consent of his parent or guardian, to assign or transfer the indenture of any such apprentice to any other person, who may be the master or owner of any registered ship; and all such voluntary

apprentices may, during the term for which they shall be bound, be employed in any ship of which the master of any such apprentice may be the master or owner: Provided always, that every such assignment shall be registered and indorsed by the said Registrar, or by the Collector or Comptroller of the Customs at the port where the master shall be resident, or to which his ship shall belong, in which latter case the said Collector or Comptroller shall notify the same to the said Registrar as is herein-before provided with regard to the indenture of such apprentice.—Sect. 34.

And be it further enacted, that all agreements with the crew of a ship made in pursuance of and in conformity with this Act, and all indentures of parish and voluntary apprentices to the sea service, and all counterparts and assignments of such indentures to be respectively executed after the passing of this Act, shall be wholly exempt from stamp duty.—Sect. 35.

And be it further enacted, that if any master to whom any apprentice mentioned in this Act shall be bound or assigned shall neglect to cause the indenture or the assignment thereof (as the case may be) to be registered as required by this Act, or shall, after the ship shall have cleared outwards on the voyage upon which such ship may

be bound, suffer his apprentice to quit his service (not entering into that of His Majesty), except in case of death, desertion, sickness, or other unavoidable cause, to be certified in the Log-book of the ship, every such master shall for every such offence forfeit and pay the sum of ten pounds.—Sect. 36.

And be it further enacted, that any two or more Justices of the Peace residing at or near to any port at which any ship as aforesaid, having on board thereof any sea apprentice, shall at any time arrive, shall have full power and authority to inquire into and examine, hear and determine, all claims of apprentices upon their masters under their indentures, and all complaints of hard or ill usage exercised by their respective masters towards any such their apprentices, or of misbehaviour on the part of any such apprentice, and to make such orders therein as they are empowered by law to do in other cases between masters and apprentices.—Sect. 37.

And be it further enacted, that no parish or voluntary apprentice to the sea service shall be at liberty to enter into the naval service of His Majesty during the period of his apprenticeship without the consent of his master; but if nevertheless he shall voluntarily enter on board any of

His Majesty's ships of war, and shall be allowed by his master to continue therein, such master, in case he shall give notice to the Secretary of the Admiralty of his consent to his apprentice remaining in his Majesty's service during the residue of the term of his apprenticeship, shall, upon the production of his indenture, be entitled, at the time of paying off the ship, to receive to his own use any balance of wages that may be then due and payable to any such apprentice up to the period of the expiration of his indenture.—Sect. 39.



An AGREEMENT made, pursuant to the Directions of an Act of Parliament passed in the Sixth Year of the Reign of His Majesty King William the Fourth, between the Master of the Ship of the Port of Tons, and the several Persons whose Names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage, to serve on board the said ship, in the several capacities against their respective names expressed, on a Voyage from the Port of to [here the intended voyage is to be described as nearly as can be done, and the places at which it is intended the ship shall touch, or if that cannot be done, the nature of the voyage in which she is to be employed,] and back to the Port of ; and the said crew further engage to conduct themselves in an orderly, faithful, honest, careful, and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful commands of the master in every thing relating to the said ship, and the materials, stores, and cargo thereof, whether on board such ship, in boats, or on shore [here may be inserted any other clauses which the parties may think proper to be introduced into the agreement, provided that the same be not contrary to or inconsistent with the provisions and spirit of this Act.] In consideration of which services to be duly, honestly, carefully, and faithfully performed, the said master doth hereby promise and agree to pay to the said crew, by way of compensation or wages, the amount against their names respectively expressed. In witness whereof the said parties have hereto subscribed their names on the days against their respective signatures mentioned.

Place and Time of Entry.			Men's Names.	Age.	Place of Birth.	Quality.	Amount of Wages per Calendar Month, Share, or Voyage.	Witness to Signature.	Name of Ship in which the Seaman last served.
Day.	Month.	Year.							

NOTE.—Any embezzlement or wilful or negligent loss or destruction of any part of the ship's cargo or stores may be made good to the owner out of the wages (so far as they will extend) of the seaman guilty of the same; and if any seaman shall enter himself as qualified for a duty to which he shall prove to be not competent, he will be subject to a reduction of the rate of wages hereby agreed for in proportion to his incompetency.



AN AGREEMENT made, pursuant to the directions of an Act of Parliament passed in the Sixth Year of the Reign of His Majesty King William the Fourth, between the master of the ship of the Port of

Tons, and the several Persons whose Names are subscribed hereto.

It is agreed by and on the Part of the said Persons, and they severally hereby engage, to serve on board the said ship in the several capacities against their respective Names expressed, which ship is to be employed in [here the nature of the ship's employment is to be described, whether in the fisheries, on the coast, or in trading from one part of the United Kingdom to another, or to any of the Islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any port on the continent of Europe between the river Elbe inclusive and Brest]; and the said Crew further engage to conduct themselves in an orderly, faithful, honest, careful, and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful commands of the Master in every thing relating to the said ship, and the materials, stores, and cargo thereof, whether on board such ship, in boats, or on shore [here may be inserted any other clauses which the parties may think proper to be introduced into the agreement, provided that the same be not contrary to or inconsistent with the provisions and spirit of this Act]. In consideration of which services, to be duly, honestly, carefully, and faithfully performed, the said master doth hereby promise to pay to the said crew, by way of compensation or wages, the amount against their names respectively expressed: Provided always, and it is hereby declared, that no seaman shall be entitled to his discharge from the ship during any voyage in which she may be engaged, nor at any other than a port in the United Kingdom. In witness whereof the said parties have hereto subscribed their names on the days against their respective signatures mentioned.

Place and Time of Entry.			Men's Names.	Age.	Place of Birth.	Quality.	Amount of Wages per Calendar Month, Share, or Voyage.	Witness to Signature.	Name of Ship in which the Seaman last served.
Day.	Month.	Year.							

NOTE.—Any embezzlement or wilful or negligent loss or destruction of any part of the ship's cargo or stores may be made good to the owner out of the wages (so far as they will extend) of the seaman guilty of the same; and if any seaman shall enter himself as qualified for a duty to which he shall prove to be not competent, he will be subject to a reduction of the rate of wages hereby agreed for in proportion to his incompetency.



BIRTHS on board the British Ship *Jane* of the Port of *London*, on a Voyage from *London* to *Memel* and back.

When born.	Name if any	Sex.	Name and surname of Father.	Name and maiden surname of Mother.	Rank or Profession of Father.	Signature, Description, & Residence of Informant
7 January, 1839.	James.	Boy.	William Green.	Rebecca Green, formerly Jennings.	Carpenter.	John Cox, Master of the ship <i>Jane</i> , of the Port of London.

The figures and the words in Italics in this Form to be filled in according as the case may be.

DEATHS on board the British Ship *Jane*, of the Port of *London*, on a Voyage from *London* to *Memel and back*.

When died.	Name and Surname.	Sex.	Age.	Rank or Profession.	Cause of Death.	Signature, Description, and Residence of Informant.
4 February, 1839.	<i>William Green.</i>	<i>Male.</i>	43.	<i>Carpenter.</i>		<i>Master.</i>

The figures and the words in Italics in this Form to be filled in according as the case may be.

Ship

, of the Port of

, whereof

was Master.

A List of the Crew (including the Master and Apprentices) at the Period of her Sailing from the Port of , in the United Kingdom, from which she took her first Departure on her Voyage to , and of the Men who joined the Ship subsequent to such Departure and until her Return to the Port of , being her Port of Destination in the United Kingdom.

Name.	Age.	Place of Birth.	Quality.	Ship in which he last served.	Date of joining the Ship.	Place where.	Time of Death or leaving the Ship.	Place where.	How disposed of.

NOTE.—If any of the Crew has entered His Majesty's Service, the Name of the King's Ship in which he entered must be stated in the Account under the Head of "How disposed of."

NOTE.—This List to be filled up, and being signed by the master, is to be delivered by him to the Collector or Comptroller of the Customs, on reporting his Ship forward, on her arrival at her Port of Destination in the United Kingdom.

AN ACCOUNT of the Voyages in which the ship \_\_\_\_\_, of \_\_\_\_\_, has been engaged in the half-year commencing on the \_\_\_\_\_ Day of \_\_\_\_\_, One thousand eight hundred and \_\_\_\_\_, and ending on the \_\_\_\_\_ Day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_, and of all the persons (master and apprentices included) who have belonged to such ship during that period.

## ACCOUNT OF THE VOYAGES.

[ *Here the several voyages, and periods of such voyages are to be described.* ]

## ACCOUNT OF THE CREW.

Name.	Age.	Place of Birth.	Quality.	Ship in which he last served.	Date of joining the Ship.	Place where.	Time of Death or leaving the Ship.	Place where.	How disposed of.

NOTE.—If any one of the crew shall have entered His Majesty's service, the name of King's ship in which he entered must be stated in this account, under the head of "How disposed of."

NOTE.—This account, when filled up, is to be signed by the owner, and deposited with the Collector or Comptroller of the Customs of the port to which the ship shall belong, or with the Registrar of Merchant Seamen in London.



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